MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2047

2005 SENATE TRANSPORTATION

SB 2047

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2047

Senate Transportation Committee

❑ Conference Committee

Hearing Date 1-07-04

Tape Number	Side A	Side B	Meter #
1	x		0-end
1		x	0-3250
Committee Clerk Signature	Mary K Monson		

Minutes:

Chairman Trenbeath opened the hearing on SB 2047 relating to no-fault motor vehicle insurance; and relating to equitable allocation of losses.

All members were present.

Tim Dawson (Legislative Council - Staffed the Interim Transportation Committee) Not in support of or against SB 2047. His purpose was merely to explain the bill.

Senator Warner asked about accidental body injury at those times when a person is possibly injured after he has left the vehicle due to an accident.

Tim Dawson responded that when a person gets out of the vehicle, he would then be a pedestrian.

Patrick Ward (Representing ANDI and PCI) Testified in support of SB 2047. See attached written testimony with a draft of a proposed amendment.

Rob Hovland (Chairman, Association of the ND Insurers) (Meter 1665) Testified in support of SB 2047 with amendments as proposed by Patrick Ward. He reported that no-fault insurance came out in the early 1970's because there were a number of emergency facilities that were expected to provide emergency room care but weren't guaranteed any payment. At that time about 50% of the people didn't have health insurance. In 1975, ND passed the mandatory no-fault on every auto policy. It was designed to eliminate minor lawsuits but several unanticipated problems have resulted in a very inefficient and costly system. Problems include:

1. Some of the treatments like chiropractic, massage therapy, etc. weren't considered mainstream medical treatments. Administrative expenses increased substantially because some of the files are open for years as people are treated. This wasn't anticipated.

2. The issue of pre existing injuries. Anyone who can be paid by a no-fault insurer has incentive to attribute the treatments to a car accident because they receive significantly higher compensation than from any other source. Consumers also have incentive to attribute the treatments to auto accidents because they don't have to pay any deductibles or co-pays.

3. This was expected to be a receive and pay system. Every bill needs to be examined and verified to make sure it is part of the treatment for a car accident. Again administrative costs have gone up.

4. Another problem is liberal interpretation by the courts because it is mandated.

The costs of no fault has dramatically increased

He said this isn't really an issue about the insurance industry. They will adjust and raise premiums if necessary. The real issue is whether it is a good idea for ND consumers who are being forced to pay the premiums whether they want the coverage or not.

Dale Haake (NoDak Mutual Insurance Co., Fargo) (Meter 2800) Testified in support of SB 2047. Does not feel that the $250 deductible is desirable. He feels that it would bring conflict and difficulty in the administration of it. Virtually every entity that handles medical bills in ND has some type of cost containment method available to it. No fault carriers have no cost containment benefit.

He addressed the definition of serious injury on page 4 line 25. Any change in this definition does not alter, in any respect, the payments that will be made by the no fault carrier. One of the objectives of the no fault legislation was to reduce the amount of litigation. To do this, several thresholds were set to qualify an injury as a serious injury. Five things are used to define serious injury: death, dismemberment, disfigurement, disability, and medical expenses. Most common is medical expenses including diagnostic tests which brings about a great deal of expense in medical care. It doesn't do anything to determine the magnitude of the injury, nor anything to correct the injury. Asks that, in determining if an injury is a serious injury, diagnostic testing not be allowed.

Addressing overdue payments on page 6 line 17 he said that valid questions and disputes do occur. Most of these are resolved through arbitration or litigation and both processes tend to be lengthy. If the decision goes against the carrier, even though the questions are legitimate and disputes are valid, the carrier gets charged interest from the day the bills are submitted. ND has statutes that allow for punitive damages to be awarded against a carrier who does not use good discretion in handling of claims. Let those laws work.

Page 6, line 18, refers to delayed billing. Asks that some constraints and restrictions be put on the care providers to give the carrier the bill in a reasonable time frame. When that doesn't

happen the no fault carrier loses the ability to review and evaluate in a timely fashion resulting in conflict between the insurance carrier and the insured.

Page 6, line 30. Supports this as an option but asks the committee to use caution to keep the word "may" incorporated. The no fault carrier would like to have the option to sue the insured, if necessary, but cautions the committee not to make it the only source of resolution available to the insureds carrier.

He stressed that the time limitations on page 8, line 6, are not major changes. They go back to the original time limitations that were adopted when no fault came into being in 1976.

Equitable allocation among carriers is a costly, difficult, and not too effective means of resolution between carriers.

Kent Olson (ND Professional Insurance Agents) In support of SB 2047. From the agents perspective the problems that are seen are on the abuse side. He gave examples of abuses that agents hope to eliminate.

David Kemnitz (President, ND AFL-CIO) Testified in opposition to SB 2047 (meter 4650). Concerned about coverage's of no-fault and abuses. The wage loss is a special concern. There are already caps built in and seems wrong to target wage loss.

The $250 deductible seems strange.

If chiropractors, massage therapists, and others are removed from the system, there would be a whole part of treatment, that individuals receive to bring relief from pain and early intervention, that would be in jeopardy. He also has concerns with reducing timelines.

Paula Grosinger (ND Trial Lawyers Association) See attached testimony. The goal of this bill seems to be in line with the goals of the insurance industry which would be to reduce the costs

associated with personal injury protection and no fault claims. The way she and her association view the bill is that the goal is being achieved at the expense of personal injury protection altogether.

Rod Pagal (Pagel Weikum Law Firm, Bismarck) Testified in opposition to SB 2047. See attached testimony.

Dean Lampe (Executive Director of the ND EMS Association) See attached testimony in opposition to SB 2047 relating to the definition of "Medical Expenses" beginning in line 23 of page 2.

Arnold Thomas (President of the ND Healthcare Association) Appeared in opposition to SB 2047. See attached testimony. (Meter 2074) He also spoke about the Medicare fee schedule. If there are abuses in the manner in which the carriers are being asked to pay for medical services rendered that are unjustified, there needs to be alternative vehicles proposed.

Senator Warner asked about the relative virtues of chiropractic and physical therapy etc. Asked if it was his opinion that those are adequately protected as viable options under this bill and are not excluded.

Arnold Thomas responded that he hadn't read the bill from that perspective. His perspective was the institutions and what the bill would mean for them..

Senator Warner was interested in whether they fit in under the exclusion of experimental treatments and medically unproven treatments.

Some discussion indicated that they were not concerned with it being a problem.

Rod St. Aubyn (BC/BS of ND) (Meter 2450) Had questions he felt needed clarification such as:

If services are not billed within the 90 day period, does that preclude the provider from billing the health insurer also? He also had concerns with possible cases of gainmanship (meter 2600). Does the health insurer reimburse at the same fee schedule, page 2, lines 27-29, or reimburse at the contracted fee schedule in place with the providers, when they start coordinating after the $10,000? Assumes the intent is they coordinate at their fee schedule. Does the provider bill at the scheduled rate or are they just reimbursed at the established rates? Also unclear if the health insurer is required to pick up the deductible from the no-fault part.

Dave Peske (ND Medical Association) See attached testimony.

Jeff Askew (ND Chiropractic Association) See attached testimony. (Meter 1055). They weren't aware of the new issue on 110% Medicare. Feels that fee would limit availability to some providers. It wasn't clarified whether the Medicare fee schedule would also be tying the services they cover. The ND Chiropractic Association would be opposed to any effort to reduce the availability of chiropractic care.

He wanted to go on the record as being offended by Mr. Hovland's comment that even the most honest chiropractor would be dishonest in determining whether the care was attributed to a car accident.

The hearing on SB 2047 was closed.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2047

Senate Transportation Committee

☐ Conference Committee

Hearing Date 2-11-05

Tape Number	Side A	Side B	Meter #
1		x	65-5760
Committee Clerk Signature	Mary K Monson		

Minutes:

Chairman Trenbeath opened SB 2047 for discussion. He handed out suggested amendments from Patrick Ward. He explained the changes as he saw them. (Meter 95) He suggested the committee further amend line 17 on page 6 and reference 28-20-34 of the ND Century Code rather than setting a rate. There is a bill that has just passed the Senate that would amend that to prime rate plus two.

Senator Nething had identified some problems earlier on page 2 lines 28-29

Senator Trenbeath said that was worthy of further discussion. He said the problem was, as described to him from the perspective of ambulance services particularly and rural hospitals, that in their charging structure all of their revenues are controlled by some entity or another. The no-fault area is one area where they can charge their full published rate and not have it diminished. It is a smaller item for most hospitals but it is a great problem for emergency management people.

(Meter 690) Discussion pertaining to lines 27, 28, and 29 on page 2. There was also discussion on the usage of the words "usual and customary" on line 23.

(Meter 1290) Discussion continued on the top of page 3, line c with respect to defining experimental treatment.

(Meter 1365) Page 3 line 13-14 discussion on the wording of "entering or alighting from the motor vehicle."

(Meter 1540) The proposed amendment from Paula Grosinger (ND Trial Lawyers) was addressed and discussed.

(Meter 1940) Next, they discussed the language inserted on page 4, lines 27-30.

Chairman Trenbeath asked **Paula Grosinger** to speak about the line between medical and diagnostic expenses. She felt this was a difficult area to distinguish between and said it would create a paperwork and coding nightmare for the medical provider.

(Meter 2410) Discussion about the $2500 threshold and the possible movement of that number. **Pat Ward** was recognized by **Chairman Trenbeath.** He said they prefer not to move the threshold. He thinks it's clear in the medical community what is diagnostic testing. He suggested putting the diagnostic testing into page 2, paragraph 9. That way it is covered but it is not used in determining the serious injury threshold.

(Meter 2863) Discussion on actions the court can take against an individual who fails to appear for an independent exam. (Page 6, lines 30-31; Page 7, lines 1-5) **Senator Trenbeath** suggested inserting "reasonable demonstrable" on page 7 line 3 to read "insurer for any reasonable demonstrable cancellation charges for the examination." He would then delete the rest from the

word "and" on line 3 through the balance of line 5. This softens the penalty but puts the person on notice that, if he doesn't show up, he will pay the cancellation fee.

(Meter 3430) Discussion on Section 2 part 3 dealing with the 90 days. There was some consensus that 90 days was short and adopting the Ward amendment but amending the 90 days to 180 days.

(Meter 4400) **Chairman Trenbeath** asked for input from those in attendance (Medical Profession, Insurance Companies, Trial Lawyers) to see if the committee was reasonably close to the recommended suggestions.

Paula Grosinger responded that overall they were.

Pat Ward said he thought this was a reasonable compromise on most of the areas. He did feel the fee schedule was important. On the Medicare multiplier he suggested maybe increasing it. and putting in the language on page 2 "for services beyond the initial hospitalization." It is the ongoing treatment, that never stops, where problems arise with the fee schedule.

Arnold Thomas indicated that the areas discussed were acceptable.

Senator Nething motioned to accept the amendments as discussed.

Seconded by **Senator Warner.**

Discussion: It was decided not to act on the last suggestion by Mr. Ward concerning the continuing treatment at this time.

Roll call vote 4-0-2. Amendment adopted.

Senator Nething motioned a **Do Pass as Amended.** Seconded by **Senator Warner.**

As per Chairman Trenbeath the vote was held open for Senator Bercier.

Final roll call vote 5-0-1. **Passed.** Floor carrier is **Senator Nething.**

50102.0301
Title.0400

Prepared by the Legislative Council staff for
Senator Trenbeath
February 11, 2005

2-11-05
1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2047

Page 1, line 1, after "sections" insert "23-12-14,"

Page 1, line 2, after "to" insert "medical records and"

Page 1, after line 5, insert:

"**SECTION 1. AMENDMENT.** Section 23-12-14 of the North Dakota Century Code is amended and reenacted as follows:

23-12-14. Copies of medical records.

1. As used in this section, "health care provider" means a licensed individual or licensed facility providing health care services. Upon the request of a health care provider's patient or any person authorized by a patient, the provider shall provide a free copy of a patient's health care records to a health care provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's health care to another health care provider for the continuation of treatment.

2. Except as provided in subsection 1, upon the request for medical records with the signed authorization of the patient, the health care provider shall provide medical records at a charge of no more than twenty dollars for the first twenty-five pages and seventy-five cents per page after twenty-five pages. This charge includes any administration fee, retrieval fee, and postage expense."

Page 1, line 10, remove the overstrike over the overstruck comma and replace "that is in motion" with "and excluding injury as the result of an individual entering or alighting from a stopped motor vehicle if the injury is not caused by another motor vehicle,"

Page 1, line 11, remove "or an injury that is caused by another vehicle"

Page 1, line 19, remove the overstrike over "~~one hundred fifty dollars per week per person prorated for any lesser~~"

Page 1, line 20, remove the overstrike over "~~period for work loss or survivors' income loss, or~~"

Page 2, line 18, remove the overstrike over "~~work loss,~~"

Page 2, remove the overstrike over line 19

Page 2, line 20, remove the overstrike over "~~loss,~~"

Page 2, line 23, remove "in excess of"

Page 2, line 24, remove "two hundred fifty dollars" and after the second comma insert "diagnostic,"

Page 2, remove line 28

Page 2, line 29, replace "fee schedule in effect at the time of the service. The term does" with "do"

Page 4, line 13, remove the overstrike over "~~"Replacement services loss" means expenses not exceeding fifteen dollars per day~~"

Page 4, remove the overstrike over lines 14 through 18

Page 4, line 19, remove the overstrike over "~~19.~~"

Page 4, line 22, remove the overstrike over "~~20.~~" and remove "19."

Page 4, line 25, remove the overstrike over "~~21.~~" and remove "20."

Page 5, remove the overstrike over lines 4 through 20

Page 6, line 1, remove the overstrike over "~~, may pay all benefits~~"

Page 6, remove the overstrike over line 2

Page 6, line 3, remove the overstrike over "~~the use and benefit of all dependent survivors~~"

Page 6, line 17, after "the" insert "judgment" and overstrike "of eighteen percent per annum" and insert immediately thereafter "allowed in section 28-20-34"

Page 6, line 18, replace "A" with "Neither the injured person nor a", remove "not", and replace "ninety" with "one hundred eighty"

Page 7, line 3, after "any" insert "reasonably demonstrable" and remove "and reasonable attorney's"

Page 7, remove line 4

Page 7, line 5, remove "suspend or terminate benefits pending compliance with this request"

Page 7, line 30, replace the first "twenty-five" with "seventy-five" and after the second "twenty-five" insert "pages"

Page 8, line 15, remove the overstrike over "~~survivors' income loss and~~"

Page 8, line 16, remove the overstrike over "~~replacement services loss and~~"

Page 8, line 18, remove the overstrike over "~~If survivors' income loss and replacement~~"

Page 8, remove the overstrike over lines 19 through 26

Renumber accordingly

Date: 2-11-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO 2047

Senate **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Amendment as discussed

Motion Made By Sen. Nething Seconded By Sen. Warner

Senators	Yes	No	Senators	Yes	No
Senator Espegard	✓		Senator Bercier		
Senator Mutch			Senator Warner	✓	
Senator Nething	✓				
Senator Trenbeath, Chairman	✓				

Total (Yes) 4 No 0

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2-11-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO 2047

Senate **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number # 50102.0301 Title .0400

Action Taken Do Pass as Amended

Motion Made By Senator Nething Seconded By Senator Warner

Senators	Yes	No	Senators	Yes	No
Senator Espegard	✓		Senator Bercier	✓	
Senator Mutch			Senator Warner	✓	
Senator Nething	✓				
Senator Trenbeath, Chairman	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Nething

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2047: Transportation Committee (Sen. Trenbeath, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2047 was placed on the Sixth order on the calendar.

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Page 1, line 2, after "to" insert "medical records and"

Page 1, after line 5, insert:

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Page 4, line 22, remove the overstrike over "~~20.~~" and remove "19."

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Page 8, remove the overstrike over lines 19 through 26

Renumber accordingly

2005 HOUSE TRANSPORTATION

SB 2047

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2047

House Transportation Committee

❑ Conference Committee

Hearing Date March 3, 2005

Tape Number	Side A	Side B	Meter #
2		X	8.9-52.7
3	X		0-39.6
Committee Clerk Signature			

Minutes:

Chairman Weisz opened the hearing on SB 2047 A Bill for an Act to amend and reenact sections 26.1-41-01, 26.1-41-09, 26.1-41-11, 26.1-41-12, and 26.1-41-19 of the North Dakota Century Code, relating to no-fault motor vehicle insurance; and to repeal section 26.1-41-17 of the North Dakota Century Code, relating to equitable allocation of losses.

Please try not to repeat something someone else has said so that we can keep the testimony reasonable. They that just want to show their support and don't want to testify, just sign in on the sheet.

Tim Dawson:(10.0) Here merely to explain the bill; not to be for or against the bill. This bill modifies not fault automobile insurance. No fault benefits are first party ier; the insurance company pays you for bodily injury in exchange for your right to sue. The exception for this, of course, is if you have serious bodily injury. Serious bodily injury is injury exceeding $2500 medical expenses. Section 1 of the draft is part of a senate amendment and puts a limitation on

the charge for medical records by health care providers. It does that in all areas; not only the no fault area. Section 2 we have definitions and no fault pays for accidental bodily injury arising out of the operation of a motor vehicle. The senate added an exclusion of injury as a result of an individual entering or lighting from a stopped motor vehicle, if the injury is not caused by another motor vehicle. Medical expenses on page 3; reasonable to usual and customary changes and those changes are carried through the rest of the bill. Added diagonogistic; but was excluded from serious injury in determining that $2500 threshold. So no fault pays for your diagonogistic testing, but it is not included in the threshold to determine if you can sue. Exclusions are charges for drugs sold without a prescription; charges for experimental treatment and charges for medical improvement treatments. You have to be occupying the vehicle; but does not include getting into or out of that motor vehicle. The rest is cleanup. (Went into depth on each area)

(done 14.3)

Chairman Weisz The charges for medical information that now coincides with what we are doing in other sections to the code. Correct?

Tim Dawson: Yes, that is correct.

Chairman Weisz(14.9) Under the current law, when we were defining diagonogistic on page 3 where that language is added. Was the assumption prior to that that it was covered?

Tim Dawson: The diagonogistic was covered before. It was added to clarify when you are excluding it from serious injury.

Rep. Price What is the judgment rate?

Tim Dawson: My understanding is it is 12%.

Chairman Weisz Anyone here in support of SB 2047?

Patrick Ward:(16.1) (See attached testimony #1)

Rep. Meyer(23.9) Is good cause defined anywhere? Who decides what is good cause?

Patrick Ward: I someone is sick and doesn't make it to the IME and they have some proof they did not make it that would be good cause. We are trying to make a greater incentive to have people show up because of the costs that are involved.

Rep. Delmore I understand you intend to pay the diagnostic costs; but you can't use them in the cumulative total? Isn't that what would be needed to bring forward that case in some circumstances because you would need to have some kind of proof of the injury.

Patrick Ward: Often times those tests are negative. Now they have $3,000 in diagnostic tests and they are over the $2500 threshold. More often than not those tests are negative. If those tests are positive you would also exceed the threshold.

Rob Hovland:(26.5)Chairman of Assoc. of ND Insurers: This no fault has been around the last two sessions and there have been bills trying to deal with issues that are causing problems. General information to what has lead up to this. No fault started in the 1970's when in some parts of the county less than 50% of the people had health insurance. The federal government was threatening to mandate some type of insurance coverage, if the state didn't so in response to that in 1975 the North Dakota Legislature passed a law the required every auto policy. The purpose was to have injury related expenses paid. Since fault would not be an issue consumers wouldn't incur costs or attorney fees to receive payment for medical bills and some lost wages and insurers wouldn't be spending consumers premiums on investigating and defending claims and supposedly the administrative costs would be minimal and these files would be closed in less than 60 days. It was also designed to eliminate minor law suits by requiring a threshold of

medical costs be met before a person could sue. Unfortunately since 1975 a number of unanticipated problems have arose and as a result the system has become very inefficient. The irony is it was designed to minimize disputes, but the reality is that there is more controversy and more expense than if there was no fault at all. There are less than 15 states that have mandatory no fault anymore. Of those, there is only 5 that require limits over $10,000 and we require limits of $30,000. We are one of the few states that has not tried to pass legislation to fix these problems. Showed exhibit for study that was done. North Dakota claims costs when up 38% back in 2003. Our administrative expense ratio is up to 40% . Because it is an insurance that is mandated by the legislature courts interrupt it very liberally. We have run into problems with unnecessary testing or over treatment just to meet the law suit threshold. This isn't an issue of how this impacts the insurance industry. We will adjust our rates accordingly. Most of our policy holders have had a 50% increase since 2002 and there will be an additional 30% increase this year. The big picture is we view this bill to fix some of the problems that are in the system that currently gives consumers the bad bang for the buck. We urge a do pass.

Rep. Delmore(33.9) Do you have a list of what is considered diagnostic?

Rob Hoveland: I do not.

Rep. Delmore So that would be up to the insurance agents whether it was diagnostic?

Rob Hoveland:(34.1) I think within the medical community there isn't allot of gray areas as to what diagnostic testing includes. Ultimately, it there is a dispute that would be something that would be decided by a court of law.

Rep. Delmore Can you get us a list of what the medical community would agree would be diagnostic testing?

Rob Hoveland:I or somebody else will get you a list that list.

Rep. Delmore Reimbursement of the medical costs. If the bills are not billed in a timely manner, does that mean the medical providers will swallow the cost and in the end the consumer is going to pay again?

Rob Hoveland: Just so you understand a six month billing period; the medical providers don't have a problem with that. It was originally 90 days and after that the senate committee amended that to 180 and I think everyone agreed that was sufficient time. Yes, they would ultimately eat that if they don't get the bills to us within 6 months it won't be a problem.

Rep. Delmore When no fault first began weren't you as an industry in favor of it.

Rob Hoveland: Yes, the insurance industry was in favor of it. The last thing we wanted was federal legislation. It is so much better if it is state specific. It was perceived that it was going to be this great, cost efficient system. If we had not had all those problems I think the ides was good. At the time the industry did support this. It did not turn out as expected.

Chairman Weisz(37.1) You showed a graph there that showed a 37% increase. Is that in claims or in dollars.

Rob Hoveland: No that is in dollars.

Chairman Weisz How much did your other claims go out.

Rob Hoveland: If you were to go back in the time period from 2002 to today in automobile insurance I think the largest rate increase of our company in that time period was 15% on any line of insurance, except for no fault, which we are at 59% plus what we are doing here.

Chairman Weisz Why are no fault claims up in 2003 37%?

Rob Hoveland: I think they were going up.This is only a one year picture. I think you could go back and find those costs going up significantly. It is a number of things including medical costs. We get billed higher than any one else. We get the bill we pay it. Other states took measures to curb these costs.

Dale Haake: (40.0)Director of Casualty Claims for Nodak Mutual. (see attached testimony #2) I am here to speak in favor of SB2047. Went over definition of serious injury. You may very well hear testimony today in opposition to this bill that will questions why, if we are having issues and concerns about the no fault bill why are we concerned about the definition of serious injury. This is the only place that defines what serious injury is in ND automobile law. You can't go to some other laws and find what serious injury is. As removal of diagnostic testing within the medical community is an elimination type process. They give tests that will eliminate your injury until they figure it out. That can result in a great amount of costs and doesn't necessarily find the certain injury. We feel, that the removal of the diagnostic test, which will leave the $2500 of curative treatment and this would be by far a much better measurement. We are trying to keep the cover confined to what we feel the original intend was. (52.7)

Tape 3, Side A

All we are trying to do is address the claims in a timely manner. Put time limits back to the way they were when the bill was enact in 1976. Encourage a too pass.

Rep. Kelsch(1.1) When you are talking about the diagnostic testing is hardly a basis to reflect how badly a person is hurt. We don't think they are reflective of the magnitude of an injury and wish they not be counted in the measurement of what constitutes a serious injury. I have a great deal of concern over those comments. As I am setting here with these injuries. This is the result

of an injury four years ago in a car accident that the doctor said all you needed was some x-rays. Now, if I had been given an MRI at that time they would have been able to diagnose that I did have a serious injury at that time and I could have had this taken care of four years ago. Instead, I have suffered over the past four years out of my own pocket for my own medical expenses and insurance, not my car insurance, because the insurance company had said we don't think it's necessary for her to have an MRI. An x-ray is good enough. You can't tell me those diagnostic tests are not important and do not reveal a serious injury and I have real problems with your comments in there. I think, what you are doing with some of those comments, is you are indeed injuring and causing serious harm to the citizens of ND. I take great exception to the comments.

Dale Haake: I have no idea who you are insured with, but I know of no no fault carrier that prescreens in advance what they will and will not pay for when a person is injured. I have no idea why your doctor did not do an MRI. Officers encourage people to go in and be checked out after an accident. NoDak Mutual will not preauthorize nor will be decline to make payments ahead of time when a facility calls and says I want to do this test.

Rep. Kelsch(4.9) The problem is there are many diagnostic tests that can be done, such as x-rays that do not reveal an actual injury. So you may have someone with an injury and the doctor isn't prescribing anything above that because the fact that it is no-fault insurance. They don't want to go above the threshold so they are going to say we will do an x-ray. We are not back in the 60 or 70's. Technology has improved, but x-rays are the same as they were then. What has improved is the quality of MRI's and the price of an MRI. It would be more beneficial, when an injury occurs that you do as much as you can rather than having to dray it out over a year or so.

Dale Haake: We pay for MRI's and will continue to do so.

Rep. Kelsch We are talking about a definition of what qualifies for your right to present a tort claim against the person that struck you. We are not talking about what bills your no-fault carrier pays. We have every intention of paying for the bills. In fact I direct your attention to the definition of medical expense. This definition outlines what the no-fault carriers intend to pay for. Inserts in the amendment is the word diagnostic. It is the intend of the insurance industry to continue to pay for the diagnostic tests that the medical practitioner fees is appropriate and necessary for the diagnosis for their patients.

Rep. Kelsch Are you registered as a lobbyist?

Dale Haake: No I am not.

Rep. Vigesaa(7.3) I would like some clarification on the occupying of the vehicle. Would that include if someone was just entering or existing their vehicle and a car hit them. Would that be covered?

Dale Haake: Yes one way or another. The distinction between entering into and occupying will at some point become an issue of fact. When you have an issue of fact sometimes they have to be determined by the courts. Not everything is black and white and a purpose of fact. You are either a pedestrian and being struck by a vehicle in motion, qualified you for no-fault benefits paid off the striking vehicle or you are occupying your vehicle, which then qualifies you for no-fault benefits off of the vehicle you are occupying.

Kent Olson: Director of ND Professional Insurance Agents. We sell auto insurance and have been following this bill. We support the bill as currently written. There are two issues that insurance agents see and need help and support on and those two areas are the definition of accidents (page 2, Lines 2 & 4). We support the occupying on page 3 because we are the agents

that see the claims for some protentional abuse happens. Without like to see it pass without changes in those two areas.

Chairman Weisz Anyone else in support. Anyone in opposition.

Elaine Grasl:(10.2) Neutral testimony (see attached testimony #3)

Dave Maring:(14.8) (see attached testimony #4)

Rep. Delmore (21.0) Do any of those doctors ever perform diagnostic tests in the cases that you have been?

Dave Maring: That really doesn't figure into what we are talking about right now. What happens often times is doctors are flown in from Minneapolis and see 10 people in one day and do their analysis and reports. Those costs are paid by the insurance company and they don't go into any category. They don't figure into the $2500. Do they do diagnostic testing, in my experience usually they do not. Usually they relay on tests that have been by other doctors.

John M. Olson: (22.1) (See attached testimony #5) When Mr. Haake suggested there was lack of definition for serious bodily injury in law I ran to the code because I as a criminal prosecutor I remembered there was a definition of serious bodily injury in the aggravated assault status. This tags on to what Mr. Mehring said. If you would take the definition of serious bodily injury out of the criminal statue you would find that it includes not only permanent disfigurement, but also adds unconsciousness, extreme pain or permanent loss or impairment of the function of any bodily member or organ. That makes it clear we do have a definition someplace else that suggests what Mr. Mehring is talking about. The threshold should be met with permanent injury. But I agree with him, if you are not going to do that, keep the diagnostic testing so the threshold. My testimony really concerns the statue of limitation changes. Mr. Ward and Mr. Haake both

briefly addressed those things. Please tell me why it is so necessary to have these statues of limitations cut in half? If there is no payment from 4 years to 2 years and then if there is payment within one year whatever. I didn't hear anything other than the fact that this is the way it was in 1975? Well, you changed it along the way for good reason. I think you understood these things can be delayed and the healing process is somewhat slow and people need that additional time. I ask that you read the testimony to why we shouldn't change that particular section of the bill in the code. We have a lot of different statues of limitations. If there is no statue of limitation prescribed then it is 10 years. But, on breach of contract or those kind of torts and injuries it is six years, so the insurance companies are getting a pretty good break from six years down to four years or down to two years that we have in the law right now. If there are problems lets not take it out on the consumers. Hopefully, you will at least deny these amendments in the portion of testimony I have given you.

Chairman Weisz(26.8) The statue of limitations clock starts when? When the accident occurs or when the claim is filed?

John M. Olson: When the accident occurs.

Paula Grosinger: (27.4) (See attached testimony #6) In previous years when I have sat through previous discussions of our no-fault statues we have talked about the threshold of $2500. We talked about today about how many nonexistent injuries reach the $2500 threshold. How many is that? I had never heard that quantified in all these years that I have coming up here to the legislature and if any every proceeded to trail. I think Mr. Merhing answered that questions. It doesn't happen. When we put no-fault in place in 1975 we established what serious bodily injury would be and as far as I know it is not the consumers that have asked for changes. It is actually a

request that has come from the insurance area. Until now diagnostic testing was included in that threshold of medical expenses defining serious bodily injury and if we remove diagnostic testing the result is simply excluding the expenses for the diagnostic test will present seriously injured individuals from bringing claims against at fault drivers. Seems like we are again looking at the legislature to fix administrative underwriting problems in the insurance industry. I did take issue with the diagnostic testing when we worked on it in the senate. This bill does not provide a definition of diagnostic testing. I am unaware of any list that makes that distinction of the definition of diagnostic and when it stops or starts.

Rep. Meyer(35.2) If it would pass, do you think our insurance premiums would be drastically reduced?

Paula Grosinger: That is a very good point. Again that is another issue that has come up repeatedly in this session. usually this never happens.

Rep. Hawken Is the $2500 realistic.

Paula Grosinger: I actually believe it is realistic from the standpoint that this is simply the court threshold and the consumer has given up the right to sue below that threshold. If they have reached that threshold they can pursue that claim.

John Olson: You asked about the statue of limitation. My discussion was really directed to the statue of limitations as it related to the first payment of benefits and you have one year under their proposal to bring the action. There have been payments made and they terminate them under current law four years from the last benefit paid or two years under the proposal.

Chairman Weisz Anyone else here in opposition to SBA 2047? There was no more.

Closed hearing(39.6)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2047

House Transportation Committee

☐ Conference Committee

Hearing Date March 10, 2005

Tape Number	Side A	Side B	Meter #
2		X	19.6-23.6
Committee Clerk Signature			

Minutes:

Chairman Weisz appointed a subcommittee today: Rep. Meyer, Rep. Vigesaa, Rep. Ruby.

I have four issues I think the subcommittee should look at: 1) Statue of limitation 2) Diagonistic testing long width threshold 3) In or out of the vehicle 4) permanent injury. Encourage anyone in the committee who has amendments or issues bring it to the subcommittee.

Rep. Price I know of three bills that have to do with judgment rates. There is discussion on having some consistency among all of them. That is on page 6, the last two and I am thinking most of them are at 12.

done (23.6

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2047

House Transportation Committee

❑ Conference Committee

Hearing Date March 17, 2005

Tape Number	Side A	Side B	Meter #
1		X	8.6-52.2
Committee Clerk Signature			

Minutes:

Chairman Weisz reopened hearing on SB 2047.

Rep. Ruby(8.7) The subcommittee met yesterday and we took up two different issues on this bill. 1.) Deals with the occupying of the vehicle. It was discussed that possibly there could be some problems with that. Seemed OK in the language there now. Covers the use of the vehicle and getting in and out of the vehicle and slipping and we did not have a problem with that.

Chairman Weisz Under current law, if you have a trailer attached that counts into the no fault. If you happen to be in the trailer, would you still be under no fault or is the trailer completely excluded. Did that discussion come up in the subcommittee?

Rep. Ruby (10.4) Occupying means to be in or upon the motor vehicle. We did not make any changes to whether it had a hitch on it or not. As Rep. Weisz just pointed out, it includes the trailer drawn by or attached to the vehicle it should be covered. The second issue that we discussed. One was dealing with diagnostic testing. We have discussed this with Mr. Ward and

they could live with if we deleted this whole area. Getting it to where negative test results wouldn't be counted, rather than having all diagnostic testing not be included. There are parts that are going to be open to interruption whether it is a result of the process, usually these things end up in court and they are decided on that level when a claim is brought to them.

Rep. Delmore(12.4) What would be to determine it was a negative diagnostic test. It did not support a claim of injury. Is that what it would be? I am not sure all of them are real clear cut in the fact that because it isn't there right at the time how do you do negative or positive. I understand what you are doing and I do have a copy of that amendment, if you want it.

Rep. Ruby I think it would be something that didn't identify that there was an injury so that shows negative on that. You could try many different things that would resulted in a finding of no injury, but that would get you over the threshold and yet they still couldn't determine the injury from those and if they did happen to have one that would find injury. These are all covered, but it is just not reaching the threshold. That was one are the committee discussed.

Chairman Weisz Is it the committees recommendation to take the language out or did you not decide.

Rep. Ruby Just talked to Mr. Ward and he would prefer to take that whole section out. I will pass out another amendment that is related. I am sure many of you have received emails to include permanent injury. Rep. Hawken provided us with a copy of the wording that is used in Minnesota and we are looking at that. (Discussed personnel injury scaring that he has on his arms from an injury.) Any of the treatment I had was over the threshold anyway. They are looking for some minor things. A serious injury means in 12.1-04.04; however they decided to define it more thoroughly and put the language from that code on to that amendment.

Rep. Delmore (17.2) Those types of things are going to be proven in court anyway. There are checks and things you can do for that. You are talking soft tissue types of things that are very real. I know people that have them and I suffer from them. Without putting that in I can not support this bill.

Chairman Weisz Your supporting the amendment then.

Rep. Meyer Permanent injury isn't defined in ND code, but it is defined under the Minnesota code and perhaps if we add permanent injury added too, but I don't know if this amendment says that?

Rep. Ruby(18.3) Just add permanent injury, which would be defined under the criminal code so that language that we put in. They assumed we were adding permanent injury so it will get us to that code anyway.

Rep. Meyer We had a problem with the soft tissue discussion of a permanent injury. Discussed language in Minnesota law)

Rep. Delmore Discussed her permanent neck injury and how she suffers every day and at that time it would not have met the threshold.

Rep. Kelsch(23.1) The one thing we have to be careful with here. We need to make sure we are balancing between the insurance companies to want this bill and our consumers and constituents out there. There is a fine line here between what the insurance companies are pushing and us making sure we are not damaging or hurting our constituents in the meantime. I think we have to pass it out in the best form possible.

Rep. Meyer An untreatable injury that causes chronic pain doesn't meet the threshold. It is a permanent injury because you have chronic pain. Rep. Kelsch did not meet the $2500 threshold right away. She said no she did not.

Rep. Ruby I want to be sure that we look at the permanent injury carefully.

Rep. Vigesaa If you are looking for the definition it is in section 12.1. I share Rep. Ruby's concern, if you just add the two words permanent injury, then you need to define what that is and is that going to open up a situation so we just choose to go with the definition that is within our code of serious injury and leave it at that. If we start putting in words we could have a problem.

Rep. Meyer Permanent injury does have a pretty good definition under the Minnesota code.

Rep. Price(29.3) I have a question on consciousness, is that 5 minutes, reoccurring or can a passenger say he was unscious and has nothing to back it up?

Rep. Ruby The other areas were pretty much discussed. Discussed proposed amendment.

Motion Made By Rep. Ruby Seconded by Rep. Vigesaa.

Chairman Weisz(32.7) We are going to go back to original law 2 year and 4 year statue of limitations.

Voice vote carried. No opposition

Rep. Ruby We discussed the diagnostic and maybe remove that whole area.

Rep. Meyer When we talked we decided we would leave in negative result as long as we defined permanent injury.

Rep. Owens (34.5) Did the subcommittee talk any about this examination by a physician being selected by an insurance company. It is on page 7. I think it should say a selection which would be agreed to be both parties.

Rep. Dosch(36.9) When we look at our DSI laws and things like that they require some of the same things. That doesn't really both me much.

Motion Made By Rep. Price to accept the amendment; Seconded by Rep. Ruby

Chairman Weisz Going back to the current law.

Rep. Price I think the unconsciousness opens up all kinds of questions. You put a bone fracture in there you probably are going to have it over the amount anyway. And there are a couple of pieces of the bill we really need like new language on the payments of medical records because that is something that was removed unintentionally when we passed the HIPA law.

Chairman Weisz called roll on the amendment. 13 Yes 1 No 1 Absent

Any further amendments on this bill?

Motion Made By Rep. Vigesaa Seconded By Rep. Iverson

Chairman Weisz To be clear, we are going back to the original law. We are going back to original law on serious injury basically the other changes are staying in the bill.

Do Pass As Amendment

11 Yes 3 No 1 Absent Carrier: Rep. Ruby

(52.2) Vote was recorded by clerk, but not on tape. Was end of tape.

Patrick J. Ward
March 4, 2005

Proposed Amendments to Engrossed SB 2047

Page 5, line 11, after "diagnostic testing" insert "with negative findings"

Page 8, line 19, remove overstrikes and delete "one year"

Page 8, line 22, remove overstrike and delete "two"

Page 8, line 25, remove overstrike and delete "two"

Date: 3-17-05
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2047

House **Transportation Committee**

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amend - #1

Motion Made By Rep Price Seconded By Ruby

Representatives	Yes	No	Representatives	Yes	No
Rep. Weisz - Chairman	✓		Rep. Delmore	✓	
Rep. Hawken - Vice Chair.	✓		Rep. Meyer	✓	
Rep. Bernstein	✓		Rep. Schmidt	✓	
Rep. Dosch	✓		Rep. Thorpe		✓
Rep. Iverson	✓				
Rep. Kelsch	✓				
Rep. Owens	✓				
Rep. Price	✓				
Rep. Ruby	✓				
Rep. Vigesaa	✓				
Rep. Weiler	✓				

Total (Yes) 13 No 1

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Admin Costs.

Date: 3-17-05
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2047

House **Transportation Committee**

☐ Check here for Conference Committee

Legislative Council Amendment Number 50102.0403

Action Taken Do Pass As Amend

Motion Made By Rep. Vigesaa Seconded By Rep. Iverson

Representatives	Yes	No	Representatives	Yes	No
Rep. Weisz - Chairman	✓		Rep. Delmore	✓	
Rep. Hawken - Vice Chair. absent			Rep. Meyer		✓
Rep. Bernstein	✓		Rep. Schmidt		✓
Rep. Dosch	✓		Rep. Thorpe	✓	
Rep. Iverson	✓				
Rep. Kelsch	✓				
Rep. Owens		✓			
Rep. Price	✓				
Rep. Ruby	✓				
Rep. Vigesaa	✓				
Rep. Weiler	✓				

Total (Yes) 11 No 3

Absent 1

Floor Assignment Rep Ruby

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2047, as engrossed: Transportation Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2047 was placed on the Sixth order on the calendar.

Page 1, line 1, after the fourth comma insert "and"

Page 1, line 2, remove ", and 26.1-41-19"

Page 5, line 9, remove "For the"

Page 5, remove lines 10 and 11

Page 5, line 12, remove "included."

Page 8, remove lines 15 through 31

Page 9, remove lines 1 through 14

Renumber accordingly

2005 SENATE TRANSPORTATION

CONFERENCE COMMITTEE

SB 2047

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2047

Senate Transportation Committee

■ Conference Committee

Hearing Date 4-07-05

Tape Number	Side A	Side B	Meter #
1	x		5-1245

Committee Clerk Signature Mary K Monson

Minutes:

Chairman Trenbeath opened the Conference Committee meeting on SB 2047.

Members were: Senator Trenbeath, Senator Nething, Senator Bercier, Representative Ruby, Representative Weiler, Representative S. Meyer.

Representative Ruby reported that the committee had several issues with SB 2047 so they put it in a sub committee to discuss the issues. They made a proposal to add language for permanent disability that would be included under serious injury but the committee turned it down. They also discussed having negative diagnostic testing so that only positive diagnostic testing would be covered. The feeling of the committee was to just remove the language on page 5 that dealt with having diagnostic testing not be part of the determination to get to the $2500 threshold. The insurance companies were okay with that. The other change was moving the limitations back to what they originally are in law. Rather than reducing them down to one and two years, they left them at two and four years. The Insurance Companies were okay with that also.

Senator Nething asked about the negative and positive diagnostic testing.

A short discussion clarified that on page 3 diagnostic is included in the part they pay benefits for but, if the language had stayed in page 5, it would not have been counted towards the $2500 threshold. Negative diagnostic testing was only a proposed idea from the sub committee. All diagnostic fees and charges will be included in the $2500 threshold as the House amended it.

Senator Trenbeath said, in his opinion, if the Senate were to accede to the House amendments what would be left would be photocopying charges and things of consequence. There would be some language about individuals entering and alighting from a stopped vehicle, some breakdown of medical expenses--a little better description of those that are not covered--charges for drugs sold without prescription, experimental treatments, and medically unproven treatments. The 180 day limitation for billing, the consequences for refusing to submit to independent examination, and the repeal would be there.

Senator Nething thought that "diagnostic" was pretty important to the bill as a trigger mechanism to get over the $2500. He asked if going to the concept of negative diagnostic not triggering but positive diagnostic triggering would hit a middle ground.

Senator Trenbeath said it seems to be a segmenting without a real direct relationship. He wouldn't want a doctor to make a decision on which test to give based on the probability it would come up positive or negative.

Representative Ruby said the thought was that it would all still be covered but after a process of elimination the negative ones wouldn't be a part of the amount that would reach the torte level. When they reached the positive one and the treatment, it would be a part of the $2500.

Representative Meyer said one of the biggest discussions with that was the soft tissue injury.

A soft tissue injury might show up as a negative test but there could still be a permanent injury an individual could be affected with for the rest of his life.

Representative Ruby said the treatment for some of those soft tissue injuries is minimal, if there is anything that can be done. Sometimes there is never the ability to reach the threshold through the treatment of that type of injury.

Senator Trenbeath asked if anybody from the medical profession testified to what constitutes a positive or negative result with respect to testing.

Representative Ruby said no.

Senator Trenbeath asked for the wishes of the committee.

Senator Nething said he would like to have more time.

The Conference Committee on SB 2047 was adjourned.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2047

Senate Transportation Committee

■ Conference Committee

Hearing Date 4-08-05

Tape Number	Side A	Side B	Meter #
1	x		1535-1610
Committee Clerk Signature	Mary K Monson		

Minutes:

Chairman Trenbeath opened the Conference Committee meeting on SB 2047.

All members were present.

Senator Nething motioned that the **Senate Accede to the House Amendments.**

Senator Bercier seconded the motion.

Roll call vote 6-0-0. **Passed.**

Senator Trenbeath is the carrier.

Date: 4-8-05
Roll Call Vote #: _____

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2047

Senate **TRANSPORTATION** Committee

[X] Check here for **Conference Committee**

Legislative Council Amendment Number _____

Action Taken Senate Accede to House Amendments

Motion Made By Sen. Nething Seconded By Sen. Bercier

Senators	Yes	No	Representatives	Yes	No
Sen. Trenbeath	✓		Rep. Ruby	✓	
Sen. Nething	✓		Rep. Weiler	✓	
Sen. Bercier	✓		Rep. Meyer	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Trenbeath

If the vote is on an amendment, briefly indicate intent:

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

07398

(Bill Number) SB 2047 (, as (re)engrossed):

Your Conference Committee

For the Senate:	4/7	4/8		For the House:	4/7	4/8	
Sen. Trenbeath	✓	✓		Rep. Ruby	✓	✓	
Sen. Nething	✓	✓		Rep. Weiler	✓	✓	
Sen. Bercier	✓	✓		Rep. L. Meyer	✓	✓	

☒ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
723/724 725/726 ~~S724/H726~~ S723/H725
the (Senate/House) amendments on (SJ/~~HJ~~) page(s) 948 - _____

☒ and place SB2047 on the Seventh order.
727

☐ , adopt (further) amendments as follows, and place

_____ on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged and a new committee be appointed. 690/515

(~~Re~~)Engrossed) SB2047 was placed on the Seventh order of business on the calendar.

DATE: 4/8/05

CARRIER: Senator Trenbeath

LC NO. _____ . _____ of amendment

LC NO. _____ . _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE

SB 2047, as engrossed: Your conference committee (Sens. Trenbeath, Nething, Bercier and Reps. Ruby, Weiler, S. Meyer) recommends that the **SENATE ACCEDE** to the House amendments on SJ page 948 and place SB 2047 on the Seventh order.

Engrossed SB 2047 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

SB 2047

Testimony of Patrick Ward in Support of SB 2047

I represent ANDI and PCI in support of SB 2047.

BACKGROUND

SB 2047 is the product of the Interim Transportation Committee's work on a study bill from last session regarding needed reforms to the no-fault insurance system in North Dakota. The study bill resulted from several issues raised by insurance industry representatives last session. For clarity and ease of passage, I am proposing some amendments to this draft bill today.

Many states have reformed their no-fault systems. Some such as Colorado, have abandoned it all together. Others, like Pennsylvania, have made major changes. This bill, in part, borrows some reforms from other states, and others are unique to North Dakota.

1. A Moving Vehicle Is Required

Section 1 of the bill revises some of the definitions. The key changes provided by section 1 are to require that a moving vehicle be involved in the accident. There are many anecdotal stories of nonmoving accidents involving car repairs, falling off a trailer, and other things that are simply not automobile insurance type

events and do not involve a moving vehicle. The amendments on page 1 would require a moving vehicle.

2. Eliminate Nonmedical Benefits

The amendments on page 1 also eliminate the nonmedical benefits associated with no-fault claims such as wage loss or survivor's income loss.

The changes on page 5 also delete the definitions of work loss, survivor's replacement loss, and survivor's income loss, and would simply eliminate those benefits and limit the no-fault coverage to medical expense type benefits.

3. Save Death Benefits

The amendments on page 2 also remove work loss. The funeral cremation and burial expense benefits remain.

4. Control Medical Expenses

The changes in paragraph 9 on page 2 relating to the definition of medical expenses are to help bring controls to no-fault insurance similar to those available to Blue Cross Blue Shield or Medicare. The system proposed in my

amendment which is to use 110 percent of the applicable Medicare fee schedule is the exact same solution that was used in Pennsylvania several years ago to address their completely out of whack no-fault system which was subject to huge abuses especially in the Philadelphia area.

5. Eliminates Certain Unusual Medical Expenses

The amendments on top of page 3 to the medical expense definition in paragraph 9 provide that the definition of medical expenses does not include charges for drugs sold without a prescription, charges for experimental treatments, and charges for medically unproven treatments. Again, this is an attempt to implement some controls in the no-fault area.

6. Requires A Person, Not A Pedestrian, To Be In Or On The Vehicle

The changes to paragraph 12 on page 3 regarding the definition of occupying are also to limit actions to moving vehicles. There are numerous cases involving slips and falls in parking lots, getting in and out of vehicles where people attempt to charge the no-fault insurer for questionable injuries or injuries unrelated to operation of a vehicle.

P. Ward

7. Excludes Diagnostic Testing From Meeting Threshold For Filing PI Suit

The change at paragraph 20 on page 4 of the bill relates to the definition of serious injury. This change simply provides that diagnostic testing is not to be used in determining the threshold for serious injury. This $2,500 threshold is what determines whether or not a tort lawsuit can be filed against another person. One of the original objectives of no-fault statutes was to reduce the amount of litigation. Unfortunately, under the current North Dakota system, a person with minimal medical bills can have substantial diagnostic testing such as MRIs, or even tests you or I never heard of performed in chiropractic offices that inflate the medical threshold on what is otherwise a very minor injury even though the tests have negative results. This change would still require the insurer to pay for reasonable and necessary diagnostic testing, but it would provide that diagnostic testing does not count toward the medical expense threshold for filing PI lawsuit.

8. Encourage Prompt Billings

The amendment I propose on page 6 at lines 18 and 19 would revise the new section 3 that is added in the draft bill to eliminate any confusion the bill draft might cause. There is a problem of providers not billing promptly enough. However, there is no intention on the part of the industry to shift costs for late

P. Ward

billing by providers to insureds. A provider who does not bill within 90 days of treatment cannot charge the claimant or insurer after that date.

9. Provides Penalties For Failure To Show Up For An IME

The amendments at the bottom of page of 6 and top of page 7 relate to independent medical examinations. Independent medical examinations are permitted by the statute. These changes provide for penalties if someone refuses to show up for a scheduled independent medical examination without good cause. At the present time, if an individual does not appear for an independent medical examination scheduled by agreement with the insurer, the insurer often incurs substantial cancellation fees. The amendment would allow a court to shift for good cause those cancellation fees to the insured claimant. It also makes clear that the insurer is not required to pay further medical benefits until the insured undergoes the requested independent medical examination.

10. Controls Copying Costs For Medical Records

Amendments in section 4, paragraph 4, at the bottom of page 7 and top of page 8, relate to costs for copies of medical records. A change in the law as a part of the HIPAA reforms last session unintentionally removed what was the previous cap on the costs for copies of medical records. We believe an initial charge of

P. Ward

$20 for the first 25 pages and $.25 per page for pages beyond 25 is a reasonable charge.

11. Reduces Time Period For Filing Lawsuit For Benefits

Section 5 on page 8 in paragraph 1 revises the statute of limitations back to the original statute of limitations when the no-fault law was adopted. It requires that any claim be brought within two years of the accident (instead of the current four), or one year after the accident where the person knows they have suffered the accident related injury, whichever is earlier. We believe that someone suffering a nonfrivolous accident related claim as a result of an automobile accident would certainly know within no more than two years after the accident (or the last payment of benefits) that their injuries were caused by the accident.

12. Repeals Intercompany Allocation Of Losses

Section 6 of the act repeals the equitable allocation between insurers. Presently, after an automobile insurance company has paid no-fault benefits to its insured, it has the right to seek reimbursement of those paid benefits from the insurer for the at fault driver. The insurance industry incurs a great deal of costs attempting to collect these payments back from other insurers in arbitration or other proceedings. The industry believes that the expenses paid out for no fault claims basically balances proportionately to market share and would therefore prefer to

just eliminate unnecessary and additional collection costs by having each insurer absorb their own cost of paid no-fault benefits. There should be no detrimental affect to insureds as a result of this change. In fact, it should bring overall expenses for insurance down.

13. Provided Adjustable Interest Rate

The amendment at page 6, line 17, provides an interest rate tied to prime for late payment. The current 18% is usurious.

CONCLUSION

This is a comprehensive bill which contains many parts. The amendments I am proposing today hopefully make it less confusing. I would be happy to answer any questions I can. I urge a Do Pass on SB 2047.

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P. Ward

DRAFT #1

Fifty-ninth
Legislative Assembly
of North Dakota

_____ BILL NO. SB 2047

Proposed amendments of Patrick Ward to SB 2047 draft 50102.0300 re: no fault motor vehicle insurance.

Page 2, lines 23-24, remove "in excess of $250.00"

Page 2, lines 28-29, replace "charges permitted under the Workforce Safety and Insurance" with "110% of the applicable Medicare"

Page 6, line 17, replace "eighteen" with "prime rate plus two"

Page 6, lines 18-19, insert "Neither the injured person nor" before "A basic no fault insurer . . . ." Remove "not" between the words "is" and "required."

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DRAFT #2

Fifty-ninth
Legislative Assembly
of North Dakota

_____ BILL NO. SB 2047

Proposed amendments of Patrick Ward to SB 2047 draft 50102.0300 re: no fault motor vehicle insurance.

Page 1, lines 19-20, remove overstrikes

Page 2, lines 18-20, remove overstrikes

Page 2, lines 23-24, remove "in excess of $250.00"

Page 2, lines 28-29, replace "charges permitted under the Workforce Safety and Insurance" with "110% of the applicable Medicare"

Page 4, lines 13-18, remove overstrikes

Page 5, lines 4-20, remove overstrikes

Page 6, lines 1-3, remove overstrikes

Page 6, line 17, replace "eighteen" with "prime rate plus two"

Page 6, lines 18-19, insert "Neither the injured person nor" before "A basic no fault insurer . . . ." Remove "not" between the words "is" and "required."

Page 7, line 30, replace "twenty-five cents" with "seventy-five cents"

Page 8, lines 15-26, remove overstrikes

Page 9, line 6, Section 7, create and enact a new subsection 2 to Section 23-12-14 of N.D. Cent. Code as follows:

2. Upon request of someone other than a patient or health care provider requesting medical records pursuant to an

authorization signed by the patient, a charge of no more than twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five. This charge includes any administrative fee, retrieval fee, and postage expense.

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SB 2047
Transportation Committee Hearing
January 7, 2005

Information prepared by
Paula J. Grosinger, Lobbyist
North Dakota Trial Lawyers Association
701-202-1293 grosingr@ndtla.com

Last session, the Legislature passed an amended bill addressing coordination of benefits and personal injury protection in motor vehicle insurance lines. The result was the repeal of North Dakota's no-fault auto insurance statute (effective August 2005) and a directive to study alternatives.

The auto insurance industry is concerned about the cost of personal injury protection and wants to lower that cost. Senate Bill 2047 will certainly achieve that goal.

However, the savings result from eliminating much of the personal injury protection currently available through the auto insurance line. The burden is shifted to other lines, but in some cases there is no replacement coverage available.

Below is a synopsis of the effect SB 2047 would have with relation to the current no-fault statute:

- Delete no-fault coverage for any vehicle that is not moving;
- Delete coverage for *any wage loss;* There is no optional coverage available to compensate for wage loss under motor vehicle lines. Many people cannot afford or would not qualify for standard disability coverage. You could add a guarantee issue requirement for optional coverage under MV lines.
- Delete converge for medical bills under $250 (this is really a disguised deductible); Not really no-fault if you have to pay a deductible
- Limit *medical expenses* to the charges permitted under the *WSI fee schedule*;
- Delete *replacement service* benefits;
- Delete *survivor's income loss*;
- Delete *diagnostic expenses* from the $2500 threshold;
- Delete coverage for any medical bill not submitted within *90 days* after treatment; This is actually a statute of limitations. It could also affect rural health care providers and facilities adversely.
- Permit the insurer to recover *attorney and doctor fees* from any insured who did not attend an IME without cause.

Following an accident, **many people are unable to work** and incur huge medical bills. If those losses are not covered by no-fault, the losses will not go away; rather, they will simply be passed on to other sources. Medical expenses will be passed on to health insurance, and health premiums will rise.

People who incur wage loss may be be forced into bankruptcy, and bankruptcies will rise. Eventually, many people will end up on public benefits (like medical assistance and food stamps), and the cost to Human Services will increase. The bill can best be described as a bill to try to pass these costs on to other entities. The lack of wage loss benefits will force many to turn to the State for help.

More specifically, following are examples of how the language of this bill would impact insureds:

Page 1 line 10
An individual's car catches fire while standing still. The occupants include children and an elderly parent who is unable to stand unassisted. The elderly parent and children are unable to exit in time to avoid injury. **Result:** *They would not be covered.*

Page 2, line 19
A woman who earns her living as a nurse suffers neck and back injuries resulting from a collision and is unable to work for six months. Her husband, a repair shop owner, sustains a broken arm and can't do his repair work for six weeks. **Result:** *She does not receive any compensation for her wage losses, nor does he receive compensation for his loss. If her husband was killed, there would be no compensation for his lost income.*

Page 2, line 23
A man's vehicle is struck by a drunk driver. The man is taken to the hospital with a broken collar bone. He is hospitalized for one day. Total hospital bill is $9,900.00. His auto insurance company uses the term "usual and customary" as its rationale for "marking down" the emergency room charges, hospital charges and physician charges to $8,000.00 based on the WSI payment schedule. **Result:** *The man has to pay $1,900.00 out of pocket. Unfortunately, he is unable to pay this bill.*

Page 3, line 4 and 5
A woman is rear-ended in a collision. She suffers from intractable back pain, and parasthesia in the extremities as a result. Her doctor refers her for a new treatment which is successful. The auto insurer refuses to pay for thre treatment saying it was experimental. **Question:** *Who gets to define these treatments, the insurer? Who updates the list of "experimental" and "unproven" treatments? Does unproven include a cost/benefit analysis that could exclude palliative care? If so, the insurers might not pay for pain pills.*

Page 3, line 13 and 14
In Colorado a few years ago, a nurse, acting as a Good Samaritan when her shift ended after midnight, was helping change the tire of an elderly couple. A drunk swung around the corner and struck her. She lost a leg. **Result with SB 2047:** *No PIP benefits under this definition.*

Page 6, line 18
A 19 year old student shows up in the ER with a concussion as the result of an auto accident. He's asked if he has insurance. "Farmers," he mumbles. The hospital sends a bill to Farmers Insurance. A couple of months later Farmers sends a letter saying the victim isn't one of their insureds. The insurer was actually Farm Mutual of Idaho. It takes the hospital 100 days to untangle the details here because the injured person has a head injury and no family member to help explain things.

Page 6, line 26
The insurer picking the reviewer is like the mobster picking the judge for his RICO trial. When the reviewer decides that the insurer doesn't have to pay, who pays for the care that's already been delivered? This provision continues to prevent injured individuals from receiving care. Delaying care means longer time to recover and higher expenses like lost wages. It also permits second-guessing of the treating professionals.

Page 7, line 3
Who decides how much a cancellation charge is? $50? $500? $5,000? Could we agree to a modest and reasonable charge that applies to any no-show regardless of the reviewer? How many folks will be scared by a bill of unknown proportions and get into their car when they ought to stay home?

Page 8, line 7
This will lead to more litigation. Whenever a state shortens its statute of limitations, people end up filing suit to protect their ability to negotiate a settlement.

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SB 2047

Submitted by Paula Grosinger, Lobbyist 114
North Dakota Trial Lawyers Association
701-202-1293

There are general rules that are applied to all types of insurance cases. The current no-fault statute was set up under an existing rule that the policy or type of coverage closest to the risk pays for injury or loss to a claimant. For instance, if a claimant has multiple coverages and sustains an injury, the circumstances determine which policy pays.

In auto cases, one would ask, "Would the injury have occurred if the claimant had not been in or about a motor vehicle."

Example: A parked car explodes injuring occupants and passersby. Auto insurance, rather than health, or property and casualty insurance, would most likely apply.

SB 2047, (Section 1, parts 1 and 13) revises the current principles of insurance law and is inconsistent with precedent. NDTLA debated compromise language which might satisfy insurers regarding injuries that amount to "slip and fall cases."

Page 1, Line 10 – 11. After "motor vehicle" and before "and which is ...." insert the following language:

> excluding injury as the result of an individual entering into or alighting from a stopped vehicle when such injury is not caused by another motor vehicle.

This still undermines current principles of insurance law and is inconsistent with precedent, but would be less restrictive than the language in the bill.

Section 2, Part 3 pertaining to billing imposes an arbitrary billing period. Why not apply this to all businesses and insurance matters? If they don't bill within 90 days, insurance will not pay. It is unreasonable.

Section 3, Parts 1 and 2 gives auto insurance companies even broader grounds to suspend or terminate benefits. Unfortunately, the examining doctors hired by insurance companies are not treating physicians. Because there is no doctor/patient relationship with the medical examiner hired by the insurance company, there is no accountability when these examiners err or provide information contrary to treatment providers' recommendations.

This section also goes contrary to the "American Rule," which is that both sides pay their own attorneys' fees when there is litigation. To allow the insurer to unilaterally suspend or terminate benefits, before the court has ordered an individual to appear, and to impose a cancellation charge for an examination amounts to shaking the pockets of the injured individual or policyholder.

See typical policy language on reverse side under REPORTING A CLAIM, Section 4, part b.

The Numerous Flaws of Senate Bill No. 2047

1) **26.1-41-01(1) (page 1 line 10-11)** No coverage for any vehicle which is stopped but still running.

Examples: Pick-up truck with passengers in box – fall out at Stop sign – no coverage for injuries, head trauma, etc.

Vehicle with passengers in it which starts on fire – no coverage

Vehicles stuck in snow, people trying to push out, wheels spinning. Fall under wheels – No coverage.

These all arise out of operation of a motor vehicle and should be covered.

What does it mean to be "caused by another vehicle"?

Where the accident is the fault of a vehicle stalled in the middle of a road or on a bridge is that "caused" by another vehicle in which there is no fault?

2) **26.1-41-01(7) (page 2 line 18-20)** Completely deprives insureds of any wage loss. Some wage recovery is one of the most crucial elements of no-fault coverage. There is no other insurance which provides this benefit to allow injured persons to have some type of income, even if it is only $150.00 week, while they are recovering. Similar with Replacement Services Loss, etc.

3) **26.1-41-01(9) (page 2 line 23 – page 3, line 5)**

A) Adds another level of scrutiny and basis for denial for insurance companies. Currently, medical bill must be 1) Related to MVA, 2) Reasonable and 3) Necessary – These are continuously grounds for denial of bills by no-fault companies. Now, Ins. Co wants to add on "Usual and Customary" as defined by WSI.

If only "usual and customary" charge is all that is going to be covered, then require medical facilities only bill out what WSI says they can bill out. Legislate this into action. Ins. Co. doesn't want to do this because then they are fighting medical community rather than individual North Dakotans.

This would be a tremendous burden on citizens / insureds / patients. Whatever is not covered under "usual and customary" is not going to be forgiven. The individual is going to have to pay the bill.

B) Adds a $250.00 deductible before no-fault kicks in. Is this $250.00 per bill or $250.00 for all bills? Already have statute which says health ins kicks in after $10,000.00 so $30,000.00 coverage really doesn't mean $30,000.00 in coverage. Now add deductible and on top of that, don't give them wage loss? Who can afford to get care? Many injured people couldn't afford it and will chose to have their health compromised instead.

C) Who defines "experimental treatments"? Who defines "medically unproven treatments? Physicians, who don't agree with chiropractors or Chiropractors who don't agree with physicians? Ins. Co's who don't want to pay anything? This is a Pandora's Box of litigation.

3) **26.1-41-01(12) (page 3 line 13-14)** Occupying would no longer mean kids who tend to be less than responsible and get in and out of vehicles as they are operating, no longer cover persons who are changing a tire, under the hood and get injured or hit by another vehicle. No longer cover persons who are pushing another vehicle out of the snow. Leaves a huge gap in coverage for injuries related to vehicles and the operation of vehicles.

4) **26.1-41-01(18) (page 4 line 13-18)** This is a benefit that provides only $15.00 per day (similar to subparts 22 & 23). This is coverage which is rarely used in my experience but is crucial when it is needed. Examples – Elderly or injured persons who cannot get out and shovel a sidewalk or driveway, get groceries, drive a child to school when parent can't, etc.

5) **26.1-41-01(20) (page 4 line 27-30)** This would significantly decrease the ability of ND citizens to recover from at-fault drivers for the injuries they received. We would no longer be able to consider X-rays, MRI's CT-Scans, EMGs, Labs?, Blood test costs, etc. in determining whether the person has a serious injury. What is the basis and reason for this? What is the value in further protecting persons who caused an injury due to their negligence, protecting a drunk or speeding driver, etc.? None. Value is in protecting the insurance company. If someone is in need of diagnostic testing, it is typically because they have a chronic and serious problem for which they should be given an opportunity to recover. MRI / CT-Scans, etc. mean there is something more wrong than a simple whiplash. Why are these costs then not considered.

6) **26.1-41-09 (3) (page 6, line 18-19)** What is the basis for the 90 day window? One error in billing and the opportunity to have ins. Pay is gone. Oftentimes takes 30 days or so to get bill, then if sent to patient who does not immediately send it to no-fault and rather sits on it or sends it to wrong ins., opportunity is gone and insured is personally responsible. This will only hurt medical facilities, insureds, etc. No matter how long after treatment the bill is submitted, the records are always going to be there to determine if it is reasonable and necessary.

7) **26.1-41-11 (2)(page 6 line 30 - page 7 line 5)** Protection provisions are already in the ins. Policies requiring insureds to submit to IMEs whenever requested. This is not just one IME – it can be 2, 3, 4, etc. If don't get opinion you want the first time, you can always try again. IME's are nothing short of sending the insured out to pasture the way it is and depriving the insured of any and all benefits they thought they were paying for with their premiums. Ins. Co's use the same doctors, over and over again because these doctors know if they terminate benefits they are going to keep getting paid $1,500.00 to $2,500.00 for every insured they send down the river. There is absolutely no responsibility or accountability in the system. Now, Ins. Co wants to be able to take insured to court, force IME and force payment of attorneys fees. Policy already provides you must cooperate. Just terminate benefits if they don't! Don't have to take the insured out to the barn, turn him over and empty his pockets also. One reason for this is so they can have another shot at the patient if case goes to litigation or if they are involved in liability side of things. Also talk about making insured patient pay for cancellation charges – This is not a $50.00 bill. Most of these IME doctors have policies that provide if you cancel within 2 weeks or less of the IME date, you pay $1,500.00 for the cancellation fee. It is ridiculous and outrageous.

R. Pagel

8) 26.1-41-12 (page 7 line 29-page 8 line2) I agree with this. In fact we need to take this further and make this change to NDCC Section 23-12-14. Facilities are charging $.75 per page. This is outrageous to get your own medical records when Staples will copy them for 3-5 cents per page. How much profit do these facilities need on a single piece of paper? Yesterday I received medical records on a patient who was in the hospital for 40 days. 676 pages of medical records cost me over $500.00.

9) 26.1-41-19 Changing the SOL – this is an exceptionally short time period which is unrealistic to comply with. We currently have a 2 year SOL in no-fault didn't pay anything out and a 4 year SOL if they paid something and then denied benefits. MN has a 6 year SOL for all of these types of actions. Give a very typical rundown / timeline:

January 1, 2005	accident – Treatment at Hospital
January 15	Ins. Co. Notified.
Feb 1	PIP application is received, filled out and returned.
Feb 15	Authorizations sent to med facility
March 1	Bills arrive for payment (if they go to right ins. Co.)
April 1	All medical records are finally received and ins can review
May 1	No-fault has concern about bills and decides to do IME
June 15	IME Scheduled
August 1	IME report is returned – denying bills

Under best case scenario, Insured has 4 months to find attorney and decide to sue out case. If any problem with timeline (i.e. insured is a farmer and cannot get to IME right away or IME dr. cancels IME due to bad weather and can't make it, or bills sent to wrong facility or records take more than a month to get there, etc. – Insured is out of luck. I had a client who had an IME in September and I finally got the report this month. That would completely deprive the insured of rights)

Last legislative session and over the break the Ins. Co. pushed to completely do away with no-fault insurance and go back to the old Tort System they initially said was terrible. NDTLA took no position on that. Legislature decided not to act on that and has so far kept no-fault system. When that was happening I told my colleagues and clients that I guaranteed Ins. Lobby was going to do something this legislative session to no-fault which would essential lay waste to the reason for no-fault in the first place. This is it. If these changes are enacted they will for all practical purposes deprive every ND citizen of the protections they pay for under their PIP portions of their premium. This is the very reason no-fault was originally enacted. To give ND citizens benefits such as wage loss and coverage for medical expenses in exchange for paying a no-fault premium and in lieu of having to bring a lawsuit to recover for these types of damages they sustained.

This is not a solution to anything. It is a complete deprivation of rights. ND Citizens would be paying for insurance that has no force and effect. Rather than this, ND should get rid of no-fault all together and return that PIP portion of the premium to ND citizens.

If questions, feel free to contact Rod Pagel or Jeff Weikum, Pagel Weikum Law Firm, 1715 Burnt Boat Drive, Bismarck, ND #701-250-1369.

59th North Dakota Legislative Assembly
Senate Transportation Committee
SB2047, No Fault Auto Insurance – Jan 7, 2005

North Dakota Emergency Medical Services Association

Good morning, Chairman Trenbeath and members of the committee. My name is Dean Lampe, and I am the Executive Director of the North Dakota EMS Association. Our association represents approximately 1500 individual EMS provider members throughout the state. On behalf of our membership, I am pleased to share with you this morning our thoughts concerning one aspect of this bill; specifically Section 1, page 2, lines 23-29.

We strongly oppose the proposed revisions to the definition of "Medical Expenses," beginning in line 23 of page 2. This language ties "usual and customary" and "reasonable and necessary" medical expenses to the Workforce Safety and Insurance (WSI) fee schedule. We feel it is not appropriate for the legislature to set the reimbursement rates at which emergency medical services or other healthcare providers are paid by the private sector insurance industry, or a private insurance company, for that matter. Let me explain why not.

First, the ambulance service business in North Dakota can be described as "financially fragile," at a minimum. Of the 143 licensed ambulance services in North Dakota, approximately 80% are staffed partially or entirely by volunteers working for city, county, ambulance service districts, or other forms of non-profit organizations operating in our smaller communities. The remaining 20% of the state's ambulance services, with paid EMS providers such as paramedics, are either private, for profit companies, or the ambulance services are operated by hospitals.

Next, our state's ambulance services, no matter how they're organized, rely on fees for services to survive; just the same as any other private sector, service provider business. Once the service is rendered, the company sends a bill, and expects to be paid. However, in the ambulance business that's not exactly what happens. One half or more of our services are provided to people who are covered by Medicare or Medicaid. Ambulance services are forced to accept reimbursements from these federal and state rate schedules which are grossly inadequate; and, in a great number of cases, do not even cover the ambulance service's fixed costs. After WSI implements their new fee schedule, ambulance services will be forced to accept yet more

government mandated reimbursement rates. We have not seen this new WSI rate schedule, because it is not published; but, we have no reason to suspect that it will be much different than the present inadequate Medicare/Medicaid rate schedules.

Ambulance services nationally and in the State of North Dakota currently operate at 25% to 40% uncollectible fees, which is largely due to government imposed rate schedules. This bill, to tag private insurance company's reimbursements for auto accidents onto another government rate schedule, in this case Workforce Safety, is unfair on its face and may, in fact, force some ambulance services to close.

Finally, if this bill were to be enacted in this present form, we are unclear as to, "Who is going to pay the ambulance bill?" Hypothetically, if there were a traffic accident and an individual is transported to a hospital by an ambulance service, that ambulance service has a right to bill the person for whom the service was provided. In this hypothetical case, let's say the ambulance bill is $1,000, and the WSI rate schedule will reimburse $700. Who will pay the remaining $300? And, if there were 2, 3, or 4 people injured in this accident, who will pay the $600, $900, or $1,200? Also, we feel the first sentence of the definition, which begins on line 23 on page 2, is ambiguous because we are unsure if this language sets a up a $250 deductible for "Medical Expenses." If it is intended as a deductible, we feel this should be a pricing option the policy owner should decide upon at the time the policy is purchased; much the same as the deductible amount which is chosen for "collision" or "comprehensive" insurance coverage.

In summary, we request the committee remove the amended and inserted language in lines 23-29 of page 2, and leave the definition of "Medical Expenses" as it is currently. Our association has no opinion on the remainder of the bill.

Chairman Trenbeath, and members of the committee, the North Dakota EMS Association thanks you for the opportunity to be heard on this bill, and I would be happy to answer questions any of you may have.

NDHA
North Dakota Healthcare Association

Vision
The North Dakota Healthcare Association will take an active leadership role in major healthcare issues.

Mission
The North Dakota Healthcare Association exists to advance the health status of persons served by the membership.

TESTIMONY BEFORE THE SENATE TRANSPORTATION COMMITTEE
REGARDING SENATE BILL 2047
JANUARY 7, 2005

Chairman Trenbeath -- Members of the Senate Transportation Committee:

My name is Arnold Thomas, I am the President of the North Dakota Healthcare Association and I am appearing in opposition to SB 2047.

This bill allows no fault insurers to adopt the medical fee schedule developed by Workforce Safety and Insurance (WSI). That fee schedule was founded on historical payments made to providers treating injured workers. It bears no relation to medical costs incurred by automobile accident victims. It has no relevance to the types and severity of injuries anticipated under no fault coverage.

The WSI fee schedule is in large part prospective. That means a fixed amount is paid to cover treatment for a defined condition, regardless of the actual services rendered to meet a patient's medical condition and regardless of the actual charges for such services. This bill would place no fault insurers in the same category as North Dakota employers.

If this bill were to pass, you would be imposing on WSI, and indirectly on North Dakota employers, the responsibility for absorbing administrative expenses incurred in pricing claims for the no fault insurance companies. You would also be requiring WSI to incur a host of conflicts that are completely inconsistent with its role and mission. For example, what role would you envision the basic no fault insurance carriers assuming when WSI determines its annual job injury payments, when WSI adjusts its fees, its billing requirements, or its payment parameters? I can assure you that the carriers will want to have a major decision making role. Both in the short term and in the long term, the basic no fault insurance carriers have one goal -- That is to reduce their costs for injuries incurred in automobile accidents by imposing additional costs on others. This bill might provide significant financial benefits to the basic no fault carriers. But, there will be no financial benefit to the WSI premium payers or to the array of medical service providers.

PO Box 7340 Bismarck, ND 58507-7340 Phone 701-224-9732 Fax 701-224-9529

While I am here, I would also like to draw your attention to subsection 20 on page 4. Let me suggest to you that a definition of "serious injury" is no place to hide substantive policy changes regarding payment responsibility for diagnostic testing. This subsection is nothing short of a veiled attempt to relieve a no fault carrier from its obligation to pay diagnostic costs. It is also a blatant indication that the proponents of this bill choose not to understand the importance of diagnostic testing in assessing an individual's medical condition and in establishing a medical plan of action. The cost of diagnostic testing is directly related to the condition of the individual. The more severe one's condition, the more sophisticated the testing. The more sophisticated the testing, the higher its costs. If the accident victim is your child, would you prefer that we guess or that we test?

Lines 18 and 19 on page 6 state that a no fault insurer is not required to pay for services bill more than 90 days after the date of treatment. This arbitrary statutory limitation again demonstrates that the proponents simply have no understanding of or recognition of the complex factors that are involved in producing a bill for payment. As a matter of information, claims completion targets for Blue Cross are set at 18 months. WSI is at 12 months. Medicare is at 15 months and Medicaid is at 12 months. Each allows for exceptions to its time limitations. The 90 day cap is neither flexible nor reflective of the complexity associated with modern medical billing practices. What it does reveal is yet another attempt by the no fault insurers to avoid charges for which they are and should be responsible and more significantly, for which they are already including in their premiums.

At this time, we would also like to draw your attention to the bottom of page 7. Subsection 4 of section 4 reduces the amount that can be charged for providing copies of medical records to basic no fault carriers from the current 75 cents for each page over 25 to 25 cents for each such page. Unfortunately, this language was thrown in without amending the current law. Section 23-12-14 was a product of the 2001 Legislative Assembly and was supported by a coalition of insurers and providers. The current language was designed to eliminate special administrative fees, retrieval fees, and postage expenses. There is no justifiable reason for creating a separate category applicable only to basic no fault insurers.

Chairman Trenbeath and members of the committee --

SB 2047 is at best, ill conceived, poorly written, and an unjustifiable attempt to reduce the financial obligations of basic no fault insurers by surreptitiously shifting those obligations to health care providers. This is an unacceptable outcome and we therefore urge a DO NOT PASS.

SENATE TRANSPORTATION COMMITTEE
SENATE BILL NO. 2047 NO-FAULT AUTO INSURANCE
JANUARY 7, 2005

Chairman Trenbeath and members of the Senate Transportation Committee, my name is David Peske, Director of Governmental Relations for the North Dakota Medical Association. NDMA represents member physicians who are in active practice in all medical specialties, residents in training programs, and retired members from across the state. Thank you for an opportunity to express our concerns regarding **SB 2047**, the Interim Committee bill revising the ND no-fault motor vehicle insurance statutes. We are requesting amendment of three sections of the bill.

SECTION 1
Page 2, lines 23-24: As proposed, the revised definition of "Medical expenses" will create a $250 cost shift, saving the insurance company that amount on each claim and shifting the cost onto the insured patients to pay, or to the healthcare provider to collect from the patients. An insured driver who suffers an injury, although not at fault, is likely to strongly resist and resent having to pay the first $250 of the treatment costs from their own pocket. In addition, replacing "reasonable" with "usual and customary" will not provide further clarity to the definition, since charges may vary significantly from provider to provider and from insurer to insurer.

Page 2, lines 27-29: The new language, limiting "usual and customary" charges to the North Dakota workforce safety and insurance fee schedule, will simply add yet another inadequate and artificial limitation in the reimbursement rates being paid to providers. This too will serve to save costs for the insurers, while shifting them to patients and providers.

We request amendment of the bill to remove the proposed revisions and reinstate the original language in lines 23 through 29. The same "usual and customary" terminology is added in the definition of "Serious Injury" (page 4 and 5), and we recommend removal there as well.

SECTION 2
Page 6, lines 18-19: This new subsection will allow insurers to ignore bills for payment of services if they are not received within 90 days of the date of treatment. We understand that the Interim Committee selected the 90-day limitation with the expectation that interested parties would provide additional comment during the legislative hearing. We are told that many providers regularly prepare and submit a billing within 30 to 60 days of treatment; however, we also understand that it is not uncommon for the initial billing of some complicated or on-going treatment claims to occur more than 180 days after the date of first treatment. Other carriers allow submission of claims payments for up to 18 months after treatment, while also allowing further extensions in certain circumstances. Imposition of a time limitation of 90 days is impractical and unfair.

We request amendment of the bill to remove this proposed revision.

SECTION 4
Page 7, lines 29-31, and page 8, lines 1-2: The limitation on the charges for providing copies of medical records is currently addressed elsewhere in ND statute, enacted in 2001. This proposed new subsection is not necessary.

We request amendment of the bill to remove this proposed revision.

Thank you for the opportunity to present the concerns we have identified. I would be happy to address any questions you may have regarding our recommendations.

January 7, 2005
Jeff Askew, D.C., President
North Dakota Chiropractic Association

Chairman Trenbeath and Members of the Transportation Committee:

My name is Jeff Askew. I am president of the North Dakota Chiropractic Association.

The NDCA is opposed to any attempts to limit the access of North Dakota citizens to appropriate chiropractic care in the treatment of automobile accident injuries under no-fault insurance.

Testimony before your committee has suggested that limiting or eliminating chiropractic care in such cases would provide sizable savings to the insurers and that singling-out chiropractic care is an avenue to address increasing costs.

Chiropractic care is an effective and cost-effective treatment for many auto accident injuries and it is reasonable to assume that it is an expense for the insurance companies to cover the cost of treatment for those injured, but it should not be assumed that eliminating or limiting chiropractic care will reduce or control insurance costs without considering all factors:

- Greater and greater numbers of people are seeking alternative care options.
- Chiropractic is the second largest healthcare service in the U.S. and is the largest "alternative" health care option in the US.
- Numerous studies have shown that chiropractic care is a very competitive option in effectively and cost effectively treating auto accident injuries and some studies suggest it should be the treatment of choice.
- Denying North Dakota citizens the proven effectiveness of their choice risks diverting their care to other treatment options that would cost third party payers more.

Mr. Hovland brought this issue before the Legislature in 2003 in the form of SB 2370 seeking to limit chiropractic care under no-fault insurance. The bill was defeated unanimously. Following the session, I met with Mr. Hovland to discuss the concerns he had regarding the cost of chiropractic care.

The NDCA has been aggressively following up on those concerns by initiating a series of meetings between with leaders in the third party pay arena and their claims analysts and peer review agencies. I am pleased to report to you that in January of 2004 the NDCA sponsored a nationally acclaimed, groundbreaking Summit Meeting on Chiropractic Fraud and Abuse with a follow-up meeting last November.
One or both of these Summits was attended by representatives from the following groups:

- Blue Cross of North Dakota
- The Blue Cross Peer Review Committee
- Workforce Safety and Insurance
- WSI's peer review group, Orthopedic Chiropractic Consultants
- Mr. Rob Hovland, representing the ND Assoc. of Domestic Insurers
- Mr. Kent Olson, representing the ND Assoc. of Independent Insurance Agents

J. Askew

- Farmer's Insurance
- Dakota Fire Insurance
- American Family Insurance
- Allstate Insurance
- Auto-Owners Insurance
- The North Dakota Claims Analysts Association
- The North Dakota Board of Chiropractic Examiners (our licensing board)
- The Examining Board's Attorney from the Attorney General's Office
- The North Dakota Department of Insurance
- The North Dakota Chiropractic Association

The primary goals of the Summits were to:

- Introduce third party payers to the ND law regarding chiropractic abuse
- Determine the prevalence of fraud and abuse in our state
- Discuss existing legal avenues available for controlling abusive practices
- Establish the NDCA's willingness to be an ally in ongoing efforts to control fraud and abuse and establish a sense of partnership between payers and providers in battling this problem.
- Provide an opportunity for the payer entities and the NDCA to share concerns and discover creative solutions for dealing with fraud and abuse.

Through these Summits, we learned the following:

- All representatives felt that the number of abusive providers they dealt with were very, very limited, with estimates ranging from 2 to 6 providers.
- While they couldn't legally share names in this situation, all agreed they were probably talking about the same few providers.
- It was agreed that both payers and providers alike would benefit by forming an alliance to help each other control these few outliers.
- Not one payer group present was aware that ND law provided specific definitions of abusive practice.
- Not one payer group present was aware that a licensing board exists that could act on their complaints without risk of their involvement in a lawsuit and, as a result, none had filed a claim of fraud or abuse with the Board of Examiners.
- We established that while North Dakota's chiropractic providers are not leaders in fraud or abuse, we are a national leader in combating it.

Eliminating or limiting chiropractic care does not benefit patients nor third party payers and may well lead to a diversion of treatment of these injuries to a form of care that may be more costly and arguably less effective. I urge you to continue to allow the citizens of ND to seek their choice of treatment for their auto accident injuries.

Thank you for the opportunity to offer comment this morning.

CIVJIG 65.40
NO-FAULT AUTOMOBILE INSURANCE—TORT THRESHOLDS

"Disfigurement"

A "disfigurement" is that which impairs or injures the appearance of a person.

"Permanent Injury"

A "permanent injury" is one from which it is reasonably certain a person will not fully recover. The injury may improve or worsen, but must be reasonably certain to continue to some degree throughout the person's life.

"Sixty-Day Disability"

"Disability" means that an injured person is unable to engage in substantially all of his or her usual and customary daily activities, for 60 days. Sixty days does not mean 60 consecutive days. It is sufficient if the total number of days of disability was 60.

USE NOTE

This instruction is intended for use in cases where there are fact issues as to whether the descriptive tort thresholds in M.S.A. § 65B.51, subd. 3(b), are in issue. In cases where the medical expense threshold in M.S.A. § 65B.51, subd. 3(a), is in issue, there should be a separate question on the special verdict form asking for an assessment of the reasonable medical expenses the plaintiff has paid, or that are payable. The damages instructions on past medical expenses should ordinarily be sufficient on the issue. See CIVJIG 91.16.

AUTHORITIES

The Minnesota No-Fault Automobile Insurance Act imposes certain limitations on the right to recover damages in a tort action. These limitations, or tort thresholds, apply only to actions for "noneconomic detriment," defined by the Act as "all pecuniary losses suffered by any person as a result of injury arising out of the ownership, maintenance, or use of a motor vehicle, including pain,

#1

House Transportation Committee
March 3, 2005

Testimony of Patrick Ward in Support of Engrossed SB 2047

I represent PCI and State Farm in support of Engrossed SB 2047.

BACKGROUND

Engrossed SB 2047 is the product of the Interim Transportation Committee's work on a study bill from last session regarding needed reforms to the no-fault insurance system in North Dakota. The study bill resulted from several issues raised by insurance industry representatives last session. The interim bill was amended in Senate Transportation in many respects to quell opposition from various sources. The engrossed bill is a compromise of all those positions.

Many states have recently reformed or done away with their no-fault systems. Some such as Colorado, have abandoned it all together. Others, like Pennsylvania, have made major changes. Minnesota, on which our law was originally based, is considering repeal. This bill, in part, borrows some reforms from other states, and others are unique to North Dakota.

1. Controls Copying Costs For Medical Records

Section 1 of Engrossed SB 2047 relates to costs for copies of medical records. A change in the law as a part of the HIPAA reforms last session unintentionally removed what was the previous cap on the costs for copies of medical records. Section 1 simply puts that provision back in the Code. Twenty dollars for the first 25 pages and $.75 per page for pages beyond 25 is a reasonable charge.

2. A Moving Vehicle Is Required

Section 2 of the bill revises some of the definitions. The key changes provided by section 2 are to require that a moving vehicle be involved in the accident. There are many anecdotal stories of nonmoving accidents involving car repairs, falling off a trailer, and other things that are simply not automobile insurance type events and do not involve a moving vehicle. The amendments on page 2, lines 2-4, and page 3, line 27, would require a moving vehicle be involved in the accident.

3. Control Medical Expenses

The changes in paragraph 8-19 on page 3 relating to the definition of medical expenses are to help bring controls to no-fault insurance costs.

4. Eliminates Certain Unusual Medical Expenses

The amendments on page 3, lines 17-19, to the medical expense definition in paragraph 9 provide that the definition of medical expenses does not include charges for drugs sold without a prescription, charges for experimental treatments, and charges for medically unproven treatments.

5. Requires A Person, Not A Pedestrian, To Be In Or On The Vehicle

The changes to paragraph 12 on page 3 regarding the definition of occupying are also intended to limit actions to moving vehicles. There are numerous cases involving slips and falls in parking lots, or getting in and out of vehicles where people attempt to charge the no-fault insurer for questionable injuries or injuries unrelated to operation of a vehicle.

6. Excludes Diagnostic Testing From Meeting Threshold For Filing PI Suit

The change at paragraph 21 on page 5 of the engrossed bill beginning at line 9 relates to the definition of serious injury. This change simply provides that diagnostic testing is not to be used in determining the threshold for serious injury. This $2,500 threshold is what determines whether or not a tort lawsuit can be filed against another person. One of the original objectives of no-fault statutes was to reduce the amount of tort or personal injury litigation. Unfortunately,

under the current North Dakota system, a person with minimal medical bills can have expensive diagnostic testing such as MRIs, or even tests you or I never heard of performed in chiropractic offices that inflate the medical threshold on what is otherwise a very minor injury, even though the tests have negative results. This change would still require the insurer to pay for reasonable and necessary diagnostic testing, but it would provide that diagnostic testing as is made clear on page 3, line 9, does not count toward the medical expense threshold for filing a PI lawsuit.

7. Encourage Prompt Billings

The change on page 7 at lines 1 and 2 would create a new section 3 in the draft bill. There is a problem of providers not billing promptly. However, there is no intention on the part of the industry to shift costs for late billing by providers to insureds. A provider who does not bill within 180 days of treatment cannot charge the claimant or insurer after that date.

8. Provides Penalties For Failure To Show Up For An IME

Section 4 of Engrossed SB 2047 at page 7, lines 13-17, relate to independent medical examinations. Independent medical examinations are permitted by the statute and often necessary. These changes provide for penalties if someone refuses to show up for a previously scheduled independent medical examination

without good cause. At the present time, if an individual does not appear for an independent medical examination scheduled by agreement with the insurer, the insurer often incurs substantial cancellation fees. The amendment would allow a court to shift those cancellation fees to the insured claimant for good cause.

9. Reduces Time Period For Filing Lawsuit For Benefits

Section 6 on page 8 in paragraph 1 revises the statute of limitations back to the original statute of limitations when the no-fault law was adopted. It requires that any claim be brought within two years of the accident (instead of the current four), or one year after the accident where the person knows, or should know, they have suffered the accident related injury, whichever is earlier. We believe that someone suffering a nonfrivolous accident related claim as a result of an automobile accident would certainly know within no more than two years after the accident (or the last payment of benefits) that their injuries were caused by the accident.

10. Repeals Intercompany Allocation Of Losses

Section 7 of Engrossed SB 2047 repeals the equitable allocation or intercompany arbitration between insurers. Presently, after an automobile insurance company has paid no-fault benefits to its insured, it has the right to seek reimbursement of those paid benefits from the insurer for the at fault driver. The insurance industry

incurs a great deal of costs attempting to collect these payments back from other insurers in arbitration or other proceedings. The industry believes that the expenses paid out for no fault claims basically balances proportionately to market share and would therefore prefer to just eliminate unnecessary and additional collection costs by having each insurer absorb their own cost of paid no-fault benefits. There should be no detrimental affect to insureds as a result of this change. In fact, it should bring overall expenses for insurance down.

11. Provided Adjustable Interest Rate

The amendment at page 6, lines 30 and 31, provides an interest rate tied to prime for late payment. The current 18% is usurious. This is incorporating by reference another bill this session, SB 2302, which ties the judgment interest rate to prime.

CONCLUSION

This is a comprehensive bill which contains many parts. The amendments I am proposing today hopefully make it less confusing. I would be happy to answer any questions I can. Others from the insurance industry will testify today regarding the need for this bill. I urge a Do Pass on Engrossed SB 2047.

P:\PWARD\Legislative 2005\SB 2047 Testimony Engrossed.doc

Dale Haake
NoDak Mutual Ins
Fargo, ND

North Dakota No-fault is not a broken and bad plan.

- inequities
- weaknesses

these are what we are trying to fix

Many changes throughout

I'll address the "heart and soul" issues

page 1 line 9 •

"Accidental Bodily Injury" — attempting to cover losses more closely in line with a use of an auto as an auto

eliminates non auto operation issues

- slipped wrench with ~~cuts~~ cut to hand
- wrenched back adjusting packages

page 2 line 23 •

"Medical expenses" — MOST IMPORTANT

Do not use a $250 deductible

- Guest passengers — conflict
- administration costs
- we can rate for this — NOT the problem

Most every other entity has some means of control

- payment schedule
- cap on certain benefits
- cap on pregnancy
- negotiated rates & fees

No fault has nothing whatsoever - no recourse
examples
Profits are made by the Hosp + Clinics at these
rates
No fault would still have to pay all -
North Dakota Citizens pay this

110% of Medicare is reasonable, allows a profit, and is good for the people of ND

page 4 lines 2-5

"Serious Injury" Very Important
Reduce litigation → BI Does not alter benefits paid by No fault
No fault statute defines serious injury
• most common is medical expense
death, dismemberment, disfigurement, disability
all clear and objective
Med Exp. is very broad
diagnostic : - used to eliminate possible cause
expense whether ~~hurt~~ hurt or not

Elderly - encouraged to get checked - all clear, yet qualify for an injury claim

Remove diagnostic tests - bring more in line with Objective injury -
in keeping with other requirements
in keeping with theory of a threshold for claim

Page 6 line 17

Overdue payments — Reality of how it works when there is dispute or question

Valid Questions do come up — Valid disputes do occur.

Typically do not resolve quickly — nature of litigation

Valid question can go against carrier — why use a punitive rate when they have the right to question?

Statute allows punitive damages to be awarded when a carrier has acted improperly — let those laws work

Don't threaten punishment for doing your job and performing within the rights of the contract.

page 6 line 18

Delay of bill submitting

Small percent — very troubling results

Theory — if I can get it submitted I can get it paid.

Puts insured and insurer at odds —

- abuse of benefits
- increase in litigation
- lack of timely review

Does not promote good business environment

page 6 line 30

Mental and Physical Examinations

Support in basic theory

- ~~Costs often played by people initial on abuse~~
- ~~suggestion for~~

Very expensive and difficult to deal with added costs go to consumers

Caution: section uses words "May"
Leave other options of resolution and handling open
Do not make this the only course available to a carrier
This is my insured and I am this persons insurer - do not make me sue my insured if I don't want to.
Do not leave me with no other options of how to handle.

page 8 line 6

Limits of action
Bring closure to issues
Common sence
* Goes back to original time lines

page 9 line 4

Equitable Allocation - Support
Costly - averages out
Take care of our own

2
Dale Haake

Testimony of Dale Haake in Support of SB 2047

I represent Nodak Mutual Insurance Company in support of SB 2047.

I wish to recap the various proposed changes to SB 2047, which deals with amendments to the existing No-fault motor vehicle statutes. In doing this, I felt it would be the most meaningful if I listed them in what I feel is an order of priority and desirability.

I would like to begin by stating that we do not feel the No-fault statutes of North Dakota constitute a "broken system". We do not believe that North Dakota should be ranked among those states which have produced the true horror stories stemming from no-fault abuses. Whether a person is a believer in a no-fault system or not, we feel all would have to agree that North Dakota has one of the best systems devised in our nation. However, that does not mean it is without weaknesses, nor that it does not require periodic changes to correct those weaknesses or to bring it in line with changing times and conditions. It is those changes and adjustments which we are attempting to address with this bill.

Definition of "Serious Injury"

Defining what constitutes a "Serious injury" for the purpose of presenting a claim for bodily injury against another person under tort law would, at first glance, seem out of place in this discussion about the payment of No-fault benefits. However, the very concept of No-fault style systems is to tie the two concepts together for the purpose of assuring that needed medical care is provided and paid for, but that only the more significant of the injuries sustained by individuals are allowed to go forward under tort claims for compensation. To that end, the drafters of the No-fault laws required a serious injury to exist before a tort claim can be presented, and they then defined what constitutes a serious injury. There are five distinct ways an injury can qualify as being "serious". The first four, death, dismemberment, serious and permanent disfigurement, and disability beyond sixty days, are all of a rather objective nature, and seem to be based upon verifiable and quantifiable issues. However, the fifth method, the incurring of medical expenses in excess of $2,500 is a much more subjective measurement, and also a much abused method of verifying the magnitude of a persons injury.

We are proposing that the expenses for diagnostic testing not be included in the $2,500 threshold requirement for verifying that a "serious injury" exists. We ask for this change because the vast majority of diagnostic tests are used as "eliminator tests". In other

words, the test does not prove what the injury is, but rather what it is not. By doing so, the doctor narrows down the choices until a diagnosis can be made. This is sound medical practice, but hardly a basis to reflect how badly a person is hurt. There is no curative nature to a diagnostic test, yet there can be great expense in the testing for a relatively minor, or even an alleged injury. Under our current system, once the tests are performed, and the monetary threshold breached, the basis for pursuing a personal injury claim against another person exists, even if the very tests which allowed the threshold to be breached show little or no injury.

It is important for all to understand that we are not proposing that diagnostic tests no longer be paid by No-fault providers. These tests will continue to be paid for, just as they always have been. Diagnostic tests are a medical need, and we are not attempting to exclude them from coverage. We just don't think that they are reflective of the magnitude of an injury, and wish that they not be counted in the measurement of what constitutes a "Serious injury".

Repeal of Section 26.1-41-17, "Equitable Allocation Among Insurers"

The current law allows a carrier, once they have paid the no-fault benefits owed to their insured, to go back to the carrier of the person who caused the damages to their insured, and collect those amounts paid. This sounds fair and just, and in theory it is. However, the reality is that this type of recovery is hard fought between the carriers, is very time consuming to pursue, usually requires arbitration to resolve, and is very often settled with both sides dissatisfied with the end results. The costs which are incurred in doing this must then be passed back to the consumer in the form of rate adjustments.

We are proposing that the right of a carrier to pursue recovery from another carrier be removed. This would then leave a system whereby each no-fault carrier takes care of their own insured, and the matter ends right there. It is felt that there would be an overall savings for the customer, as there would be a reduction in the cost of administering the claim file. As for the recovery of moneys spent, it is felt that, in the long run, these things tend to average out between the carriers. In other words, each carrier has files they recover on, and files where they reimburse another carrier on. Over time, these seem to average out, and there is every indication that there is no real benefit to going through all the effort of recovery. It is a wash, and we wish to do away with the process.

Section 4, 26.1-41-11, paragraph 2

We are very much in favor of a carrier being given the right to seek recovery for costs incurred due to the lack of cooperation in the conduct of an Independent Medical Examination. This amendment gives the carrier such rights, but it is very important to note that the carrier retains the right to use all other available non-litigation means of resolution, and is neither required nor encouraged to seek the assistance of the courts. We feel that this is a very useful and much needed tool in the handling of difficult situations.

Section 3, 26.1-41-09, paragraph 2

I am confident that the drafters of our No-fault statutes were attempting to discourage poor claims handling practices by the mandating of a substantial rate of interest for the delayed payment of bills. However, the initial concepts of the handling of claims under No-fault was a very quick payment of limited bills, all clearly related to the accident in question, and requiring very little investigation and questioning. However, the reality of responsible claims handling is that there are a fair amount of bills which must be questioned and researched. Furthermore, there are a fair number of bills which are submitted which come into dispute because of very questionable relationship to the accident in question. While many questions are resolved with the simple securing of the associated medical records, many are not, and fall into dispute, the resolution of which often is done through binding arbitration, and sometimes even through the court systems. The very nature of this type of resolution results in significant periods of time to pass from the time the bill is submitted for consideration until it is resolved. While carriers are generally very cautious about declining payment for a medical bill, and will typically have very good reason for doing so, it is still possible for the decision to go against them, regardless of how careful they may have been. To then charge 18% interest from the time of submission of the bill is nothing more then punishing the carrier for performing their role in a responsible fashion. The North Dakota Century Code has a very good set of statutes dealing with unfair claims handing practices. It also has a full set of laws which deal with the awarding of punitive damages when a carrier has behaved in an egregious manner. We ask that these laws be allowed to monitor and punish those carriers who behave in reprehensible fashion. We also ask that the No-fault statute be altered so that it does not punish a carrier for asking a question or challenging a matter for sound and justifiable reason, just because a forum of resolution did not ultimately see things in the favor of the carrier. We ask that the percent owed for overdue payments be amended to the prime rate plus two percent, as allowed in section 28-20-34.

Definitions, "Accidental bodily injury", and "Occupying"

The reason behind the request for the amending of these definitions is that the No-fault carriers have, since the inception of the No-fault system in North Dakota, been faced with countless absurd claims for no-fault benefits arising out of injuries which are only connected to the use of a vehicle by the most remote sense of the term. I am certain that you have heard enough anecdotes that I don't need to provide more in this writing. The goal of the carriers in requesting these changes is simply to narrow the availability of no-fault coverage to those incidents of injury which actually arose out of the use of an automobile as an automobile, and to eliminate from coverage those injuries which really had nothing to do with an auto, other then the fact that one may have been near by.

Section 5, 26.1-41-12, paragraph 4

We are simply attempting to remove the abusive charging which a number of medical facilities have resorted to since this section was removed several years ago. The No-fault carriers have no problems with paying reasonable charges which are

commensurate with the product being purchased. However, $50 and $75, paid in advance, for two or three pages of records is hardly commensurate with the product being purchased. We just want some fair pricing rules in place.

Section 3, 26.1-41-09, paragraph 3, delayed submission of bills

We are happy to report that this problem does not pertain to the vast majority of care providers here in the state of North Dakota. However, for those few providers which it does pertain to, the problem is very vexing, and almost always results in conflict between the No-fault carrier and the insured, frequently requiring arbitration or court action to resolve. The problem arises when a care provider begins a very questionable course of care with an insured. This is usually in the form of high frequency treatments. The care provider usually suspects that, if the carrier knows of the style of care being provided, the carrier will question and challenge the care provider early on, usually resulting in modification of the plan of care, or even termination of further payment for ongoing care. However, the theory used by the care provider is, "if I can get it incurred, I can probably get it paid". This is often done with the consumer not really being aware of the games being played by the care provider. Once the bills are received by the No-fault carrier, sometimes up to a full years worth with the initial billing, the carrier frequently will want to research the matter further. The end result is often times a conclusion that a great deal of the care was not warranted, and therefore not owed by the carrier. This often results in the care provider trying to collect the balance from the consumer, and the consumer wishing the No-fault carrier to pay the balance, whether properly owed or not. It is this type of conflict we wish to reduce. All we ask is to receive the bills in a timely fashion, so as to allow us to evaluate the case in a timely manner, reducing conflict with our insured.

Section 6, 26.1-41-19. Limitation of actions.

This amendment simply puts back in place the time frames which were used when the No-fault statutes were originally established in North Dakota law. Very simply, we feel that if a person has sustained an injury in a motor vehicle accident and feels they are entitled to no-fault benefits, they should know where they got hurt within a year of the accident taking place. If they need more time then that to figure out where they got hurt, how can they be certain of how it happened? The other time limit allows the carrier to close their file after two years has passed since the last payment for benefits was made. This simply allows closure to the claim, and is nothing more then placing reasonable time frames on the treatment patterns. If ongoing care is warranted and utilized, the claim stays open until care is ended or benefits run out. It is only when care has ceased for two years that the matter gets closed for good.

Conclusion

Nodak Mutual Insurance Company feels the above amendments and changes are well thought out, fair and equitable, and will result in an even better No-fault system for the citizens of North Dakota. For these reasons, we would ask the Committee move this bill to the floor without change and recommend passage as drafted.

#3

Senate Bill 2047--relating to no-fault motor vehicle insurance

House Transportation Committee

Robin Weisz--Chair

March 3, 2005

Hon. Chair Robin Weisz and Members of the House Transportation Committee, I am Elaine Grasl and a member of District 47. I apologize that I am not up to date on Senate Bill 2047, but I do have some observations regarding no-fault motor vehicle insurance. I have thought for some time to contact my legislator on the subject. Since I was not able to come earlier in the session, I hope this is not repetitious.

My vehicle was rear-ended in 2001; I was not at fault. I am one of relatively few individuals who have gotten past the evaluation process; I could not locate my note quickly today, but I believe last year's research indicated that about 24%(?) of individuals got that far in the process--that is those individuals who were found to have legitimate complaints and could have their medical expenses paid. It may be helpful to note that one's personal health insurance does not pick up a share of the bills until one has been denied by the no-fault insurance. My personal experience is that the insurance paid the bills for a time. Eventually, however, I began to get notices from various medical facilities that I needed to pay 1,000's of dollars in bills, or we would be in default. Unbeknownst to me, the insurance company had quit paying and the medical providers had, for quite some time, been too polite to mention the situation to me. The explanation from the insurance company was that they were going to have me evaluated. The evaluation was set for months"down the road" and one is directed /told that any changes may have consequences. (I asked if it could be moved up--the appointment is also set without one's prior consultation.) Meanwhile, the providers are already owed money and they are told that they will be paid by the insurance company if it deems one's medical condition worthy of payment--and related to the accident. (Incidently, I was not the only one "clueless" in this process. No one seemed clear on the process.) The insurance company will, when requested, write letters to those to whom money is owed (but those to whom money is owed certainly don't like it and still are obligated, in some cases, to say that they will enforce a deadline for payment--by you.) Oh, this happened to me twice. (After the first time, the bills were paid, but I was required to alter my treatment plan.)

I would expect that you have been made aware of complaints regarding the requirement to turn over medical records. In my case, I had to release all my records from birth and ongoing, twice. This included gynocological records--all records--just in case I had spoken to a doctor or nurse (their notations) about an injury or

or an illness which would affect my medical condition. That feels like an invasion of privacy, but I understand it up to a point. However, especially because members of my family are affected by disabilities, I added to the releases that I wished any identifying information regarding my family members to be deleted. I, for one, can't recall what information I've given to a physician about whom when I give a family medical history. It it just not okay, in my mind, to give other individuals personal info. out in this type of thing.

Lastly, (I'm trying to remember the issues that I had planned to relate to my legislator), after planning to avoid it all these years (I lived in the hope that the issue would resolve itself), I finally decided a couple of weeks ago to recontact the other insurance company, just to get a feel for their requirements if I finally went ahead with a claim. I feel guilty because my family has suffered the consequenses also, to some extent, for my having been injured by this other person. I have received no reply. I guess I'll go to a certified letter next and make some inquiries, as well.

This has been by no means "a fun road to travel". I've tried to cover at least some of the issues. If you have any questions, I will try to answer them.

Elaine Grasl
223-8149

#2

TESTIMONY – NO FAULT LEGISLATION

House Transportation Committee
Hearing on SB 2047 – March 3, 2005
No-Fault Legislation
Submitted by – David S. Maring

My name is David S. Maring. I practice law with Maring Williams Law Office, P.C. which is a six-attorney firm with offices in Bismarck and Fargo, North Dakota, and Detroit Lakes, Minnesota. I have been licensed to practice in North Dakota for over 30 years. I am also licensed to practice in Minnesota. I have been certified by the National Board of Trial Advocacy as a Civil Trial Specialist and am a member of two international trial organizations – International Society of Barristers and The American College of Trial Lawyers. Over the years, I have worked on a large number of personal injury cases (with underlying issues concerning no-fault) in both North Dakota and Minnesota. For the first 20 years of my practice, I was primarily on the defense side of personal injury cases and, in the last 10 years, have been more involved with personal injury cases from the plaintiff side. My position is that the tort legal system should have balance and be fair to all participants. I oppose SB 2047 in its present form.

North Dakota's no-fault law was first passed in the 1970's. One of the primary purposes was to make sure that there was a ready source of money available to pay the medical expenses of accident victims and to compensate them for wage loss up to the limits of no-fault coverage. These payments were to be made by the no-fault carrier no matter who was at fault and before the tort system could sort out what liability carrier might ultimately be at fault.

In exchange for what was to be a fast and efficient way to make sure the medical bills/wage loss got paid no matter who was at fault, accident victims had their right to bring an action against an at-fault driver restricted. The injured party could not bring an action against the at-fault driver unless the injured party sustained a serious injury. One of the ways that an injured person could establish that he/she had sustained a serious injury was to show medical expenses in excess of $2,500.

Over the past 30 plus years, these no-fault provisions have worked reasonably well. I say reasonably well because there are a lot of issues about no-fault carriers cutting off benefits to North Dakota citizens injured in accidents by taking the position that the medical treatment wasn't necessary or wasn't related to the accident. To support this conclusion, the no-fault carriers often make use of out-of-state doctors who fly in to one of the larger cities in North Dakota to examine injured North Dakota citizens and (almost routinely) come to the conclusion that they weren't injured in the accident or were injured and have now recovered and need no further medical treatment. If the injured party also has health insurance, they often don't fight the decision by the no-fault carrier because it would be too expensive for them to hire an attorney and litigate over the payment of the medical expenses which, for the most part, will be picked up by the health insurer.

When this injured person then seeks to make a claim against the liability carrier for the at-fault driver, the injured person now runs into a new roadblock. That roadblock is the contention by the liability insurer that some or all of the medical expenses that were incurred weren't necessary and that the injured person didn't sustain a serious injury because he/she doesn't have $2,500 of legitimate medical expenses. This issue

is the subject of debate in a substantial number of claims brought by injured North Dakota citizens. If the case goes all the way to trial, one of the questions the jury is frequently asked to answer is whether there has been a serious injury (has there been $2,500 of medical expenses necessarily incurred as a result of this accident?).

The proposed change to the no-fault law to exclude "diagnostic tests" in the computation of when the $2,500 threshold is met has nothing to do with no-fault coverage. The no-fault carrier will still be responsible for paying the "diagnostic test" expenses as it has in the past. The only difference is that when the injured party tries to bring a claim for pain and suffering, wage loss that wasn't paid by no-fault, permanent impairment to bodily functions, etc., the injured party will have a more difficult time doing it because then he/she can't use "diagnostic tests" (whatever that term may ultimately be defined to mean) in meeting the $2,500 threshold. Thus, what this legislation really does is take away additional rights from North Dakota citizens to bring claims against at-fault drivers and their insurers. What legitimate basis is there for North Dakota citizens to be giving up more of their rights to benefit the liability carriers of at-fault drivers? This no-fault legislative change doesn't directly benefit no-fault carriers. It benefits liability carriers - who are also no-fault carriers.

Critics of the tort system in North Dakota and elsewhere talk about lawsuit abuse, frivolous lawsuits, and junk lawsuits. I can tell you that in 30 years of handling lawsuits in many states (but primarily in North Dakota and Minnesota), I have been involved in handling and/or become aware of literally hundreds of personal injury claims. I can't even think of a half dozen of those claims which I would consider to be abusive, frivolous, or junk lawsuits. The great majority of the citizens of the State of North

Dakota do not want to get involved in lawsuits and claims. When they do get involved, they do it for a good reason – they feel that they have been wronged and are justified in bringing the claim or lawsuit.

North Dakota's citizens shouldn't be asked to further sacrifice their right to bring a claim against the at-fault driver and the insurance coverage of the at-fault driver under the guise of a change in the no-fault law. The tradeoff being made on behalf of the citizens of North Dakota (giving up their tort claim for lesser injuries in exchange for faster payment of medical expenses and wage loss) would no longer be a reasonable tradeoff. Many people sustain injuries that, after a period of treatment, are determined to be permanent and cannot be further improved by medical or chiropractic care. Oftentimes, without including "diagnostic testing," those citizens will not have incurred more than $2,500 of medical expenses. Examples of the type of permanent injury that may not require more than $2,500 of medical expenses (excluding "diagnostic testing") include permanent soft tissue injury, compression fractures of the spine, and broken bones that do not heal in proper alignment. What you are left with is an injured North Dakota citizen who has incurred less than $2,500 of medical expenses (excluding "diagnostic test" expenses) who will suffer every day with a permanent injury for the rest of his/her life. The no-fault statute should not be changed to exclude the costs of "diagnostic testing" from the $2,500 threshold. If that change is allowed, an additional amendment should be made which would add "permanent injury"[1] to the threshold such that North Dakota citizens who sustain a permanent injury (but do not have more than

[1] Minnesota's no-fault legislation, Minn. Stat. § 65B.51(3), includes "permanent injury" as one way to meet the threshold. In the North Dakota statute, the words "a permanent injury" could be added on page 5, line 9, as an additional way to meet the threshold.

$2,500 of medical expenses without counting "diagnostic testing") will still have a remedy against an at-fault driver and that driver's liability insurer.

N.D.C.C. § 26.1-41-01(21)

"Serious Injury" Threshold

1) death, dismemberment, serious and permanent disfigurements; or
2) disability beyond 60 days; or
3) medical expenses in excess of $2,500 [excluding "diagnostic testing"]
4) ["a permanent injury"]

Dated this 3rd day of March, 2005.

David S. Maring

Testimony of John M. Olson
Lobbyist # 376

ND Trial Lawyers Association

Senate Bill No. 2047- No Fault Auto Insurance

House Transportation Committee

March 3rd, 2005

Chairman Weisz, and members of the House Transportation Committee, my name is John Olson and I appear on behalf of the North Dakota Trial Lawyers Association regarding Senate Bill 2047. Although you have heard concerns expressed as to the need for amending North Dakota's no-fault auto insurance statutes, my comments are specifically addressed to the proposals contained on page eight, which shortens the time periods in which an insured can bring an action against his/her insurance company to require it to pay for no-fault benefits.

Reasons for defeating this amendment:

1. Current Law v. Amendment

   - Current North Dakota law provides that if your no-fault insurance company does not pay for medical bills you submit as being related to a motor vehicle accident you have two years within which to bring an action against the insurance company to require it to pay the bill. (The amendment would decrease this down to 1 year.) If the insurance company has initially paid for some of the bills but then decides to terminate coverage after some of the initial bills were paid, the insured can bring a claim within four years. (The amendment would decrease this to two years.)

2. We are already granting special rights to insurance companies.

   - These actions are breach of contract actions. It is the insurance contract which the insured is alleging is breached as a result of the failure of the insurance company to pay the bills.

- Breach of contract actions have a six-year statute of limitations in North Dakota. Therefore insurance companies are already given more restrictive time limitations than the average North Dakota citizen or business. Why should the insurance industry be given further special limitations? Why is their status held in such high esteem over every other North Dakota citizen and business?
- States such as Minnesota have a six year statute of limitations to bring actions against an insurance company as a result of their failure to pay a bill. North Dakota's law is already substantially more restrictive.

3. A great percentage of North Dakota citizens will be left in the cold.

- On its face, one year seems like plenty of time within which to bring a claim against an insurance company for failure to provide benefits. However in practical application it is not. A typical time line is as follows:

January 1, 2005	accident - Treatment at Hospital
January 15	Ins. Co. notified of accident
Feb 1	PIP application is received, filled out and returned.
Feb 15	Authorizations sent to med facility by the no-fault company
March 1	Bills arrive for payment (Note: one of SB 2047s amendments provides that medical providers must submit bills for payment within 180 days. This was changed from an initial amendment which proposed 90 days because the medical industry was concern that many bills could not be submitted within 90 days. If this is the case, many bills would not arrive for payment until April 1 or later on this time line, thereby moving everything back a month or more. If in fact the medical provider waits until day 180 or close to that to submit a bill, then it is not July 1 on our schedule here. Additionally, many med providers have several insurance companies on file for a patient and may submit the bill to a health insurance carrier or liability carrier and wait for denial before it is submitted to the no-fault carrier.)
April 15	All medical records are finally received and ins can review.

May 15	No-fault has concern about bills and decides to do IME.
July 1	IME Scheduled (needed to coordinate doctors schedule and insured's schedule)
September 1	IME report is returned - denying bills (reports are not always returned this promptly)

Under a typical scenario such as this, the North Dakota insured has 3-4 months to find attorney to decide to sue out this case. If the insured party is a farmer who is in the middle of a busy, season, they are simply not going to meet the deadline and their right to recovery is lost. Further, most attorneys would not take on the case a month or two before the statute of limitations runs because there is not enough time to evaluate it and sue it out. If attorneys sue our frivolous claims they are subject to Rule 11 sanctions, fees. etc.

In conclusion, often times the healing time after an injury can be a lengthy process. North Dakotans are hearty people and can be slow to complain, go to a doctor, and seeking the services of an attorney can be a well thought out decision. It does not make good sense to shorten the time periods proposed in this section of the bill, which only serves to further compromise the rights and abilities of North Dakota citizens to compel their insurance companies to comply with their contractual commitments. Cutting in half these particular rights seems completely arbitrary, and I would urge you to consider the rights of North Dakota's citizens first. I respectfully ask that you remove these amendments to allow current law to remain in effect.

#6

SB 2047 – No-fault Auto Insurance
House Transportation Committee, Honorable Robin Weisz Chair
Submitted by Paula Grosinger, Lobbyist 114
North Dakota Trial Lawyers Association, 701-202-1293
March 3, 2005

North Dakota has had a no-fault auto insurance system since 1975. At that time, the legislature enacted a criterion that must be met before a secured person may sue or be sued for pain and suffering resulting from an auto accident. The criterion was **serious bodily injury**.

Until now, diagnostic testing was included in the threshold of medical expenses defining serious bodily injury. In its current form, SB 2047 changes this. Consumers or secured individuals did not ask for this change in the definition of serious bodily injury. Rather, insurance companies have requested the change. The result: excluding expenses for diagnostic tests from the threshold for serious bodily injury will prevent seriously injured individuals from bringing claims against at-fault drivers.

The bill provides no definition of diagnostic testing. Are all blood tests, MRIs, CT scans and ultrasound procedures diagnostic? Who makes that call? – the provider or the insurer? The issue could be open to litigation. Once a diagnosis has been made, it could be argued that tests, MRIs, CT scans, and other procedures are no longer diagnostic but are indistinguishable from treatment and the ongoing assessment of that treatment.

Insurers may argue that providers and injured individuals will use diagnostic tests/defensive medicine in order to meet the threshold. SECTION 2, Part 9 addresses this. "Medical Expenses" are defined as usual and customary charges incurred for reasonable and necessary diagnostic services. If there is too much testing, the insurer may well determine that it is not reasonable and necessary.

The present language in the bill simply creates confusion. We recommend that diagnostic testing be restored to reach the threshold of medical expenses constituting serious bodily injury.
We also recommend that permanent injury be included in the definition of serious bodily injury.

Note: Only about 8% of diagnostic procedures are ordered by physicians based on conscious concerns about defensive medicine. The cost of defensive medicine is indirect and difficult to measure, but the cost of malpractice premiums is less than 1% of the total cost of the health care system.
Source: U.S. Congress, Office of Technology Assessment, *Defensive Medicine and Medical Malpractice, OTA-H-602* (Washington, DC: U.S. Government Printing Office, July 1994)